

INDIA'S FOREST POLICY & FOREST LAWS

Chhatrapati Singh

Foreword
Ramachandra Guha

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Voicing the Silence

The completion of this manuscript brings as much anguish as adulation and pride. The grief in the finality of Prof. Chhatrapati's absence is sharply augmented by this publication becoming posthumous. The dissemination of relentless fieldwork evolved as cohesive and comprehensive print material is rewarding. His joy in the fruition of several months of work would have been immense.

On my husband's behalf, I take the opportunity to recognize all the institutional and individual support that catalysed his efforts culminating in this publication. Perhaps I can shelter in Upendra Arora's (Publisher) gentle persuasiveness, whose commitment I see as a statement of the collective force crystallised through Dr. Singh's authorship.

My warm gratitude to all and again a special mention of Natraj Publishers' consistent and continuing interest in what Dr. Singh left as a "manuscript to be proof read". Mr. Arora's quiet determination, discrete perseverance and understanding of my grief and long lapses of silence were both admirable and encouraging. Together with my children, Bhriigupati and Maya, I am indebted for retrieving to public use what would have otherwise just been shelved.

I know Prof. Singh would be happy in presenting this work.

Asha Singh

P R E F A C E

Sweeping deforestation has provoked an urgent debate in India on the efficiency of our forest policy. Foresters are beginning to question the relevance of the custodial approach enforced by the British.

A lot has changed since. Community forest management, people's participation, and joint forest management are terms now frequently used when discussing forests and forestry in India.

It is these pertinent issues that *India's Forest Policy and Forest Laws* attempts to accommodate. A comprehensive text, it is written in a style which is easy to read. The volume analyses the ecological, social, economic and institutional aspects of our forest policy.

This publication carries great sentimental value for Natraj Publishers as it is a loving gift from the author Late Dr. Chhatrapati Singh who placed the manuscript in our keeping before he passed away. It is the result of his tireless efforts in gathering every relevant information on the subject. Recommendations authored by Dr. Singh aim at making the ecological and social aspects more central to the forest policy.

It is with great pleasure that we bring out this publication in fond memory of Dr. Chhatrapati Singh at the same time assured that it will prove of immense value to all those passionately concerned with the protection of our valuable forests.

We are grateful to Jaskiran Chopra for providing a close editorial reading and putting the manuscript into excellent shape. Thanks are due to S.S. Garbyal, IFS, Director, Forest Education, and P.C. Tyagi, IFS, Indian Council for Forestry Research & Education, for their invaluable comments.

Mrs. Asha Singh joins us in recording our deep gratitude to Ramchandra Guha for readily agreeing to write a foreword to the book.

Publishers

FOREWORD

Democracy in the Forest

'Liberty and forest laws are incompatible', remarked an English country vicar in 1720. He was speaking on behalf of villagers shut out of woodland reserved for the exclusive use of the king. The history of state forestry has indeed been a history of social conflict. In monarchies and in democracies, in metropolitan Europe as well as in colonial South Asia, the state management of forests has met with bitter and continuous opposition. On the one side are the professional foresters who believe that timber production can be ensured only through the exclusion of humans and their animals from wooded areas; on the other, the peasants, pastoralists, charcoal ironmakers, basketweavers and other such groups for whom access to forests and forest resources is crucial to economic survival. To the criticisms of these latter groups have now been added the criticisms of environmentalists, who charge foresters with simplifying complex ecosystems in the direction of commercially valuable but biologically impoverished cultures.

In continental Europe, the eighteenth and nineteenth centuries were peppered with social protest movements against the state management of forests. These protests inspired, among other things, Karl Marx's first political writings, and a memorable novel (*Les Paysans*) by Honore de Balzac capturing peasant hostility to forest officials. When the European model of strict state control over forests was exported to the colonies, the disaffected peasants and tribals responded with arson and violence. In India, the battle between these contending parties has been going on for over a century, since the inception of the Indian Forest Department in 1864. Movements over forest rights were a recurring phenomena in the colonial period. Forest grievances formed an integral element of such famous tribal upsurges as Birsa Munda's rebellion of the 1890s, the Bastar rebellion of 1911, and the armed revolt led by Alluri Sitarama Raju in Gudem-

Rampa in 1919-22. Peasant nationalism in Kumaun and Garhwal began and ended with the question of forest rights. Even where organized rebellion was absent, popular feelings about forest management were made manifest in attacks on individual officials and sabotage of state property.

These varied protesters were making two central claims. First, that state takeover of forests represented a violation of tradition, for whereas previous rulers had taxed agriculture and commerce they had, by and large, allowed rural communities to retain control over forests and grasslands. Second, that state forest management created a class bias, for the species planted by Forest Departments and the products it harvested were meant chiefly for distant markets and outside interests. Forestry for commerce implied strict curbs on local use, for trees to be harvested for paper and plywood could grow to maturity only if villagers were not allowed to forage in the forests for fuel, fodder, thatch, medicinal plants — that is, such items as were (and are) crucial to what the ecologist Madhav Gadgil has called the 'biomass economy of rural India'.

The Forest Department was unquestionably the most unpopular arm of the British Raj. After India became independent in 1947, the legislative and administrative apparatus of forest management remained unchanged. *Control* and *commercialization* remained the operating motifs of state policy. If anything, state control and commercial exploitation both intensified. To meet the growing demands of industry, large areas of natural forests were felled and replaced by monocultures of exotics. Meanwhile, factory users of wood products were given handsome subsidies, while village users were grievously discriminated against. To cite only one example, bamboo was sold to a Birla-owned rayon mill at one rupee a tonne, while basket weavers had to buy it at the market rate, which tended to be at least a thousand times as much.

Tragically, even in free India government forest policy continued to seriously ignore village needs, demands, and interests. The forestry regime began to change only in the

nineteen seventies, and in response to popular protests such as the Chipko movement, which broke out in April 1973. In fact, the decade of the seventies was marked by a series of forest movements in different parts of the country. These took place in the Himalaya, in the Western Ghats, and, above all, in the vast tribal belt extending across the heart of peninsular India. In the Chotanagpur plateau, forest protests formed an integral part of the larger movement for a separate tribal homeland of Jharkhand, to be carved out from the huge, unwieldy and predominantly non-tribal state of Bihar. In one much celebrated case, tribals demolished a plantation of teak, a highly prized furniture wood, that was coming up on land previously under the *sal* tree (*Shorea robusta*), a species of far greater benefit to the local economy. Their slogan, 'Sal means Jharkhand, sagwan (teak) means Bihar' was a one-sentence critique of the narrow commercial ends of state forestry.

Over the past quarter of a century now, there has been an ongoing, nation-wide debate on forest policy in India, a debate fuelled by the continuing social tension in forest areas and the evidence of massive deforestation provided by satellite imagery. Now, and not a moment too soon, the policy discourse on forestry is slowly moving towards a more accommodationist perspective. Foresters and peasant protesters seem at long last to be talking to, rather than talking past, each other. The rigid and uncompromising attitude of the past is being replaced by a willingness to listen to and at least partially incorporate the other point of view. Within the forestry profession itself, doubt has been cast on the contemporary relevance of the custodial and policing approaches previously followed. A system of natural resource management crafted in absolutist and colonialist times clearly needed to be seriously modified or even overthrown. With this move from conflict to collaboration have come shifts in the language of forestry itself. Terms like 'scientific forestry' and 'rational land management', euphemisms for state control and commercial timber production, are being rapidly replaced by sweet-sounding phrases such as 'community management', 'participatory development' and 'joint forest management'.

In this movement for forest democracy in India the late Chattrapati Singh played an important role. Dr. Singh was both a philosopher and a legal scholar, these attributes combining to good effect in his 1986 book, *Common Property or Common Poverty? India's Forests, Forest Dwellers and the Law*. This book presented an effective critique of the prior claims exercised by the colonial state over huge areas of uncultivable land in India. As Dr Singh demonstrated, the colonial forest laws, mindlessly taken over by their successor governments, were in grievous violation of social history and of justice itself.

Common Property or Common Poverty? was an analytical critique of the assumptions and biases underlying Indian forest policy. The book cleared the ground for detailed empirical studies of the operations of forest law and policy in different parts of the country. These studies were conducted by Dr Singh while he was Professor and Head of the Environment Law Unit in the Indian Law Institute, New Delhi. The present book is largely based on these studies. Their geographical range is impressive - from Himachal Pradesh in the North to Karnataka in the South, from West Bengal in the East to Maharashtra in the West.

Even more impressive, perhaps, is the intellectual range of the book. Dr Singh analyses both forest law and forest policy, their operations in the short-term as well as in the long-term. He studies both Reserved Forests and National Parks, areas under different legal regimes but with a common management structure. He investigates the conditions and prospects of various forms of forest property—*individual*, *communal* and *state*. He deals with different spatial scales—the *village*, the *province*, the *nation*, and the *globe*.

A distinctive feature of the book is the bold attempt to harmonize the different ends of forest policy. These ends are four : the *ecological*, the *social*, the *economic*, and the *institutional*. The analysis demonstrates that in the past the economic aspects have been sovereign, with great cost both to environmental sustainability and to social justice. The policies and recommendations outlined in the book aim at making the

ecological and social aspects more central to forest policy. For this to happen, the institutional structure would have to be modified : forest laws would have to be reformed, and forest officials would have to be retrained. Dr Singh himself provides valuable suggestions for the reform and amendment of the Wildlife Act and the Panchayat Act. He also prints models of draft legal agreements between the two institutions whose collaboration will prove crucial to the future of Indian forestry, namely, the village panchayat and the state Forest Department.

India's Forest Policy and Forest Laws is a comprehensive treatment of a subject vital to the social, economic and ecological life of India. The book is written in an easy and fluent style. The ideas it conveys are important, but they are never couched in academic jargon. Dr Singh is not afraid to state his case, and to state it candidly. Consider, by way of illustration, these remarks :

(on the industrial bias of forest policy)

'It is evident that through these laws and rules the government's forest resource use policy is to make such resources available at very low costs to the industries and that it is more eager to promote forest based industries than conservation of the resources as desired by the National Forest Policy.'

(on how private farmers should be encouraged to meet industrial demand instead)

'The Indian farming community has demonstrated that with support from the government they can produce foodgrains in a cost-effective manner. ... [T]here is sufficient evidence to show that the Indian farming community can also produce wood-biomass to meet the industry's requirement'.

(On who have been the real beneficiaries of forest policy)

'A large part of the benefits from forestry still accrue to the urban rich'.

(on who should be the main beneficiaries in the future)

‘First, it is necessary to understand that the main issue in the management of degraded forest lands is that of right of access and use of resources by the local people and their cattle’.

The great American radical, Henry David Thoreau, famously remarked that ‘In Wildness is the Preservation of the Forest’. One might adapt that to our context thus : ‘In Democracy is the Preservation of the Forest’. This means, for one, that the forest departments must have an advisory rather than hegemonic role. To quote the anthropologists Nandini Sundar and Roger Jeffery, forest officials must view themselves as ‘partners’ rather than as ‘elite guardians’. They must collaborate with rather than strictly regulate customary use, and share revenues from forest working with the villagers. They must strenuously strive to employ local people, especially women, at all levels of forest administration. All this calls for an attitudinal change among state officials, a retraining and retooling in keeping with the democratic spirit of the age. For forest democracy mandates the cultivation of a faith in indigenous knowledge, in the management capacity and robustness of local institutions, and above all, a sharp focus on local access to the usufruct of the forests.

The published writings of Dr Chhatrapati Singh have greatly contributed to this ongoing movement for forest democracy in India. *India's Forest Policy and Forest Laws* will consolidate and further that already notable contribution. ‘In the long run’, writes Dr Singh on page 184 of the present book, ‘the local self-governments form the backbone of democracy in India, and if a forestry programme can help to strengthen this democratisation, there is no reason why it should not’. These wise words should be framed and placed on the desk of every forest official in the land.

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Chapter One

Forest Law And Policy For India

In 1994 the Government of India, Ministry of Environment and Forests, formulated a new Bill called the Conservation of Forests and Natural Ecosystems Bill, and promulgated it for discussion and observation. Some non-government organizations have also come together and formulated an alternative draft for discussion. In my view, neither of these draft bills is comprehensive enough to cover the new issues, nor do they deal with some of the basic problems confronting the making of a new forest law for India. The government and the NGO bills remain largely within the similar framework as that of the 1927 Act.

The consolidation of India into a nation, which began with the British empire building process in 1834, and concluded with Sardar Patel after Independence in 1950, necessitated regular reformulation of the Indian Forest Act. Fifty years after political Independence the Indian forest laws are in need of a similar consolidation and change, albeit for different reasons.

The need for consolidation of forest laws in the British period was political and economic. The colonization process discovered that the laws, such as the Bengal Settlement Rules of 1859, or the Land Acquisition Act of 1894, were inadequate to acquire all lands or proclaim dominion status over them, or set up the zamindari system everywhere to earn land revenues, simply because barely 15 to 20 per cent of the geographical area of India was in private possession for which land records existed. The Land Acquisition Act requires proclamation through notifications and settlement of rights, which in turn demands proper documentation of record of rights and compensation. For most areas in India, especially the tribal areas, such records do not exist. The Indian Forest Act, which adopts the procedure of the Land Acquisition Act for settlement of rights, does not make the dominion status of the land dependent on the settlement of such rights. The government can simply proclaim the land to be "forest" by

notification, declare it to be government land without defining what a forest is, and acquire dominion over it without compensation to the original title holders, which is not possible under the Land Acquisition Act. Through this process the colonizers converted almost half of India's geographical land area into government land, of which about 40 per cent belonged to the Forest Department alone. Even today about 23 per cent of India's geographical area belongs to this department of the government. Proclamation of dominion status over lands, which initially belonged to various kings was, evidently, not an easy task. The Indian Forest Act went through various amendments and consolidation through 1865, 1878, 1882, 1890, 1901, 1918, 1919 and 1927. Further consolidation was required in 1930-31 and a final amendment in 1948. The 1927 version of the Indian Forest Act operative today is as amended in 1948.

Political dominion of the forest areas, it must be noted, brought about the desired economic hegemony over other resources for the British. This is simply due to the fact that much of the natural wealth of the country, such as mines and minerals, wildlife, medicinal plants, and river valleys, are within the forests. Control over the forest areas, *ipso facto*, allows control of the other natural resources. It allows mining without compensatory afforestation or soil conservation, loot of medicinal plants without compensation or royalties to the local people. It also permits large hydro-electric or irrigation projects in river valleys without legal accountability. All this happened in an economy of plenty, where there was no resource crunch, and a much smaller population to make the demands on the resources. In the present economy of scarcity and high population, of course, the forces and reasons that demand reformulation and consolidation of the forest laws are different.

For the drafting of a new forest law, which embodies the basic principles of the National Forest Policy, one needs first to determine the scope of the law, and the issues which such a law should address in the current forestry needs, practices,

administrative infra-structure, and the requirements of the people.

Let us begin with outlining the basic issues confronting forest laws in India at present. To my mind, these basic issues are of at least six different types which can be grouped together as follows.

Issues concerning :

- ❖ the legal definition of 'forest';
- ❖ consolidation of various existing laws;
- ❖ legal problems concerning enforcement;
- ❖ problems arising from Centre-State relations;
- ❖ procedural problems in implementation;
- ❖ the incorporation of international obligations, arising from ratified treaties, into the Indian forest law.

Let us now turn to note in detail the concerns which arise from each of the above issues.

Legal definition of forests

What is in a name, it is said, a rose by any name is a rose! This is not true in the context of the term "forest", for what we are dealing here with is not one rose but a variety of types of flowers. The term "forest" is a generic term and not a specific one.

The important point to note is that under the generic term "forests", we are dealing with a variety of eco-systems which may have trees or plants in them, such as wetlands, desert scrubs, riverine or estuarine flora, high altitude flora. The Indian Forest Act, 1927, does not define forests, it simply leaves it as 'whatever the government notifies.' This amounts to a delegated legislative power, without any guidelines. The Wildlife (Protection) Act, 1972, has a substantive definition of the eco-system, in terms of "ecological, morphological, geological..." (Sec. 18). There can be at least three different types of substantive definitions of forests: ecological (mangroves, deciduous, etc.), economic (commercial,

production, conservation), and social (tribal, lok-aranya, rajaranya, dev-arnya, brahm-aryana). The Indian Forest Act uses a different type of classification, which is in terms of administration (reserved, protected and so on). The manner in which "forest" is defined makes a major difference in the administration or implementation of the law. For instance, it would certainly make the following differences :

If "forests" is to include wetlands or desert flora the implementation of the law through various government departments would have to be different.

The revenue and forest records would have to be kept differently.

The manner in which the boundaries would have to be legally demarcated would also have to differ.

Hence, it is necessary that the type of definition of "forest" that we want must be decided. That will also decide the scope of the Act in terms of the ecosystems it can deal with.

Consolidation of laws

There are two types of problems regarding consolidation of laws if one were to come up with a new Central law, or a law that can be adopted by various states. Firstly, those which have come about due to the fragmentation of the intent or spirit of the Indian Forest Act, 1927, due to various state legislations concerning forest or forest produce. Secondly, those which concern forestry activity outside the scope of any forest law, such as joint forest management practices under the JFM Notification or protected area management under the Environment Protection Act, 1986, Notifications. To begin with, it is important to describe briefly the first type of problem.

During the fifty years after Independence, since the power to legislate on the subject of forests has been with the states [prior to 1980 it was not on the Concurrent List of the Indian Constitution], the states have legislated many laws which now need to be taken into consideration for consolidation. These relate to exploitation of raw material for

industrial purposes, such as the Saw Mills Acts: rules of different states, like the Bihar Rules for the Establishment of Saw Pits and Regulation of Depots, 1983; rules concerning transit and felling of timber, the U.P. Transit of Timber and other Forest Produce Rules, 1978, for instance; acts for controlling other minor forest produce of economic value, such as the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, the Bihar Kendu Leaves (Control of Trade) Act, 1973, etc. Besides the Rules and Acts directly about forest produces, there are also various revenue, tax and land laws which have direct impact on forestry work. In Himachal Pradesh, for example, land has been acquired under the H.P. Land Ceiling Act, 1972; and forestry work is being carried out on such "Ceiling lands" (Ghasini lands) with the Revenue Department on which social forestry and joint forest management work are being executed. In Gujarat usufruct and beneficiary rights on revenue wastelands (not Gochar or Panchayat lands) are regulated by the Revenue Department [Order No. : 3986-226(m) of 1st January, 1987]. On the other hand the usufruct and beneficiary rights on Panchayat and Gochar lands are regulated by the Forest Department [Order No. : PRS 1080-87452-V-3 of 30th April, 1987] This order allows for tree pattas and harvesting of coupes on Panchayat lands, creating major anomalies in implementation. To note another type of anomaly, in Rajasthan under the Rajasthan Land Tax Act, 1985 [Secs. 2(a)(ii), (f),(g) (i-iii)] a wealth tax of 50 percent is imposed on the total annual sale price for private farmers, and 2 percent for industrial or commercial purposes. Such a law evidently promotes only commercial forestry and prohibits agroforestry, that too in a State which certainly requires a greater tree coverage.

If one were to take note of the various laws that have direct or indirect implications on forestry work it would be obvious that there are often more than a dozen laws enacted by each State legislature relating to forests. There is need for consolidation of such laws so that the required biodiversity conservation and sustainable use of forest resources can be carried out by the Indian government.

The second type of problem concerning consolidation concerns forestry work conducted outside the scope of the Indian Forest Act. The Social Forestry programme and the Joint Forest Management work under the State Notification are in conflict with the different Panchayat Acts passed after the 73rd Amendment to the Constitution. The government Bill attempts to consolidate the JFM rules and provisions of the Panchayat Acts into one law. But since much of the JFM work is being carried out on degraded forest lands which are with the Forest Department and not with the Panchayats, this type of consolidation overlooks the major issue of consolidating the JFM concerns into the Indian Forest Act.

Enforcement of law

The enforcement of law is a complex issue. On one hand the Forest Department has been given the task of protecting the forests of India without adequate policing powers, which create problems for seizure and confiscation of illegally felled timber or poached animals. Even where such seizures take place the low penalties and anticipatory bail do not help in stopping the theft of wood and animals. On the other hand, since the Forest Department has traditionally played an exploitative role it has managed to alienate the local people who can actually help in stopping illegal felling or poaching. The task of selling timber is different, it can be done through few contractors and a transport system. But the task of protecting or regenerating forests requires a totally different managerial strategy. It requires the participation of the local people and human input through labour. The local people will not participate if they are merely getting some concessions on forest produce and the outsiders the real market value of the timber. They will also not participate if the wages for regeneration of forests are minimum under the Forest Rules or the Minimum Wages Act. They would rather get the maximum wages as provided by the Finance Commission or the market. The new Forest Act of India would have to be realistic and heed these facts if it is to be successfully implemented.

Centre-state relations

There are three types of problems that need to be tackled as regards Centre-State relations for the drafting of a new Forest Act. These are as follows :

- Reservation (Notification) of areas as forests;
- Dereservation/denotification of forest areas for non-forestry use;
- Decision making about land use.

The Forest Conservation Act, 1980, is not really a substantive law, it is a delegated legislation which empowers the Minister to make the decisions about how to use the forest lands. It is hence a land use law and depends upon the whims or fancies of the Minister or his commitment to use the forest resources in a sustainable way (leaving aside for the moment his or her knowledge of the Indian forest situation and its value). Further, this Act only forbids "reserve forests" from being denotified by the States. Denotification or dereservation, otherwise, is a State subject which they are empowered to do under the Indian Forest Act. This is conflict of laws which needs to be resolved. The main spirit of the Forest Conservation Act, one presumes, is to conserve forests. This, however, cannot be achieved unless the law mandates decision making is on scientific basis and the conflict of powers of land utilization under the Indian Forest Act and the Forest Conservation Act is resolved. Unlike the Indian Forest Act, which leaves the decisions about land use to the government, there is a further complication due to the fact that the Wildlife Protection Act makes the State Legislator the repository of this power (Sec. 26 A). The land use issue gets yet further complicated due to the 73rd Amendment to the Constitution which puts the obligation of the Panchayats to manage village forests. The new forest law will have to take all this into account although forest and wildlife have been moved into the Concurrent List of the Indian Constitution.

Procedural law

The issues concerning the procedures in law should be considered from two perspectives, from that of the State government and that of the people. From the side of the State, the existing laws are lacking in various ways. There are variations in the distributions of powers between the Revenue and Forest officials; jurisdictions are not well defined since either the demarcation of boundaries have not been done or the land records not modified, and so on.

From the perspective of the people the first major problem concerns the procedures for the settlement of rights. The procedures under the Land Acquisition Act have been adopted in the Indian Forest Acts and the Wildlife Act. The operation of the Land Acquisition Act makes a number of presumptions for its successful operation. First that there are land records on the basis of which the people can claim their rights. For much of rural India, and specially the tribal areas, such records of rights just do not exist. Infact the tribals, who inhabit a large part of the forest area of India, did not conceive the forests as their property. The notion of owning forests as property is one brought to India by the British. The second presumption is that the notifications issued under the forest laws will actually reach the people whose land is being taken away or that they will even be able to read such notifications. There is nothing in the forest laws which makes the officials accountable if the notice has not reached the people. The second problem from the perspective of the people is that the notion of legal limitation on time does not exist in the forest laws. For most of Indians forests the rights of the people have not been settled as yet, including in National Parks and Sanctuaries. Consequently we find that years have elapsed and the people inside such areas are living in total insecurity about their rights. Many problems concerning ecologically fragile or rich areas that India is facing today would not have been there if the rights of the people had been settled within a specified period of time.

If one looks at the litigations concerning forest issues most of them concern procedural aspects, either relating to the

powers utilized by the forest officials or those concerning settlement of rights. Over the years, and mainly after 1980s the judiciary has begun to react to the substantive aspects of conservation, such as those related to mining or aquaculture, or distribution of resources, such as the rights of the local people over common forest lands.

Evidently, the new Forest Act must not blindly adopt the procedures of the Land Acquisition Act for settlement of rights. It must take the social reality of India into account.

International obligations

The nature of international laws has changed substantively after the Stockholm Conference. Whereas the earlier laws put merely a moral obligation on the nations to abide by the laws, the post Rio Conventions make it mandatory for the nations to change their own national laws so that they are in keeping with what has been ratified at the international level. Various Conventions or Treaties, either directly or indirectly now demand that India should reformulate its biodiversity laws, including the forest laws, to fulfill its international obligations. Amongst such Conventions the important ones are the Convention on Biological Diversity, the General Agreement on Trade and Tariffs, CITES and the Ramsar Convention. The formulation of a new forest law for India will have to keep its international obligations in mind.

Chapter Two

LAW & POLICY ISSUES FOR FORESTRY IN UTTAR PRADESH

Executive Summary and Action Plan

This Report documents and analyses the legal framework of forestry work in U.P. from the point of view of the policy required to meet the current needs of the State. On the basis of this analysis, it makes recommendation for the requisite law and institutional reforms. The major recommendations concern use of forest resources for industrial purposes, joint forestry management for meeting the needs of the local people, and conservation of the remaining endangered biodiversity of the State. The recommendations are classified into three types, those for which immediate work is required, those which can be done over a longer period and thirdly, the institutions which require structural changes on a priority basis. The recommendations are as follows:-

Production for industrial use

a) Short Term Agenda

1. Farm forestry and community woodlots along with Agro-forestry need to be promoted by modifying the U.P. Tree Protection Act, so that the restrictions apply only in areas close to National Parks and Sanctuaries or ecologically fragile areas. For all other areas under farm or Agro-forestry and degraded forest land areas where JFM is not being implemented liberal rules and policies need to be adopted.
2. Arbitrary bans, such as the government order to ban all felling upto 1000 metres need to be rationalised. Such bans should have scientific basis such as slope gradients or ecological fragility.

(b) Long Term Agenda

1. The Indian Forest Act, as applicable to UP, was passed in 1927, when the forest situation in the State was very different. There is a need now to draft a totally new type of Forest Bill, get it discussed on various forums and then get it legislated.
2. There is also a need to make a different type of JFM agreement with the industries. The government must engage itself in drafting such a notification and implement it for commercial forestry.

(c) Institutional Change

All forest research and training institutions in the State of UP are controlled by the Government. These include institutions in Dehradun, Haldwani, Allahabad and Kanpur. All these institutions need to be made legally autonomous and independent, if they are to develop. The facilities of those institutions should be available to anyone interested, such as industries, NGOs and others.

Joint Forest Management

(a) Short Term Agenda

Implement the JFM Notification through the Agreement and Resolution as drafted in this Report.

(b) Long Term Agenda

Amend the UP Panchayat Act to include requirements of forestry, including JFM within it.

(c) Institutional Change

The Panchayat structure and functions are most significant in the long run. Immediate strengthening of the Panchayats is required, through training extension work and other methods.

Bio-diversity Conservation

(a) Short Term Agenda

1. Amend Section 18 of the Wildlife Act (WLA) to demarcate area as Sanctuaries for which a prior

Scientific survey has been done to locate the actual areas of Wildlife habitation.

2. Amend Section 19 of the WLA to make it mandatory for the Collector to first inquire into the number of people who are the original or long term forest dwellers and then to explicitly recognise and declare their right to reside and exclude the rights to all others.
3. Amend Section 36 of the WLA, relating to National Parks, and make the settlement of rights of the people similar to that of the Sanctuaries as mentioned here. The difference between National Parks and Sanctuaries must be in terms of the procedure for denotification and not in terms of rights. The WLA should say that National Parks can be denotified by the Centre only, whereas Sanctuaries can also be denotified by the state.

(b) Long Term Agenda

1. For all National Parks and Sanctuaries in UP there is a need to complete the settlement of rights wherever not done, at the earliest (within the life period of this project).
2. In U.P., more than fifty per cent of the Wildlife live outside the Park and Sanctuary areas. Declare all such areas as Sanctuaries with explicit recognition of the right to reside, of the original dwellers, as mentioned in recommendation above.

(c) Institutional Changes

The Wildlife Institute at Dehradun needs to be made legally autonomous. There is certainly a need for a few more similar but independent institutions seeing the scope of work required in the State.

Action Plan

To ensure the implementation of these recommendations it is suggested that a Legal Support Committee be created for this project whose terms of reference will be as follows:

Terms of Reference

- a) It will consist of the PCCF, CWLW, two law experts and two NGOs.
- b) It will review the implementation of the recommendations at least twice annually.
- c) It will draft or bring about the drafting of the new laws, notification, etc.
- d) It will organise workshops and seminars annually to discuss the drafted bills and then present them to be legislated.

Introduction

The land area most affected in the State of Uttar Pradesh are the plains. The Himalayan mountainous region covers almost two thirds of what is left of forests in the State. Moreover, the mountains are also geologically, hydrologically and ecologically different from the plains. The State of U.P. hence, requires two different types of forestry management and practices and not one. Since most of the wildlife, alongwith forests and grasslands, are in the mountains, the more important forestry work there would have to be for bio-diversity conservation. The plains, however, require some radical changes. The 1927 Forest Act which governs the management here embodies a policy which is not in keeping with the new policy.

In the light of India's National Forest Policy, 1988, the forestry work at the State level need to be appropriately modified. It must be noted that the new National Policy is wide enough in its scope and meaning to encompass the variations required for different States. There is no need, hence, to amend the National Policy. The real requirement is to find ways by which the mandate of this Policy can be implemented at the State levels.

The National Policy clearly recognises three basic sectors for which forest resources are required and lays down guidelines for all these sectors. The three sectors are:-

- a) production sector : for industrial or commercial needs;
- b) the social sector : for people's fuel, fodder and housing needs, specially those of forest dwellers or tribals who depend for their living on forest resources, and;
- c) the biodiversity sector : for safeguarding the needs of wildlife and future generations.

With the enactment and implementation of the Forest Conservation Act, 1980, the amended Wildlife Act, of 1991, the Constitutional Amendments (73rd and 74th), concerning Panchayats and Municipal Corporations, all of which are Central legislations affecting and necessitating amendment in all these States, including Uttar Pradesh, it goes without saying that the primary need for the State is to reconsider Policy and Institutional issues.

Objectives of the National Forest Policy, 1988 :

The NFP (1988), in sharp departure from earlier forest policies, stresses the importance of forests for maintaining environmental stability and ecological balance and for meeting the subsistence needs of the rural and tribal people for fuelwood, fodder and smaller timber. It states that:

"the principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim".

As for forest based industries, the NFP (1988) lays down that :

"as far as possible a forest-based industry should raise raw material needed for meeting its own requirement by establishing a direct relationship between the factory and the individuals who can grow the raw material" and that "farmers, particularly small and marginal farmers, would be encouraged to grow wood species required for industries on marginal/degraded lands available with them."

The NFP (1988) also states that :

"national forests serve as a gene pool resource and help to maintain the ecological balance. Such forests will not, therefore, be made available to industries for undertaking industrial plantation and for any other activity."

The Forest Laws applicable in the State of U.P. are as follows :

- 1) U.P. Private Forest Act, 1948
- 2) U.P. Private Forest Rules, 1950
- 3) U.P. Establishment and Regulation of Saw Mills Rules, 1978
- 4) U.P. Forest Corporation Act, 1974
- 5) U.P. Forest Department (Conferment of Power) Rules, 1977
- 6) U.P. Forest Service Rules, 1952
- 7) U.P. Fruit Nurseries (Regulation) Act, 1976
- 8) U.P. Fruit Nurseries (Regulation) Rules, 1976
- 9) U.P. National Parks Act, 1935
- 10) U.P. National Parks Rules, 1935
- 11) U.P. Panchayati Forest Rules, 1972
- 12) U.P. Protection of Trees in Rural and Hills Areas Act, 1976
- 13) U.P. Resin and other Forest Produce (Regulation of Trade) Act, 1976
- 14) U.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1972
- 15) U.P. Tendu Patta (Vypar Viniyaman) Niyamawali, 1972
- 16) U.P. Transit of Timber and other Forest Produce Rules, 1972
- 17) West Bengal Private Forests Act, 1948

Besides the above specific state laws there are also a number of Central Laws which apply to the State or have been adopted by the State for implementation. These include :

- 1) The Indian Forest Act, 1927
- 2) The Forest Conservation Act, 1980
- 3) The Forest Conservation Rules, 1991
- 4) The Wildlife (Protection) Act, 1972 (1991)
- 5) The Environment Protection Act, 1986

- 6) The Land Acquisition Act, 1884
- 7) The Mines and Minerals Act, 1982
- 8) The Cattle Trespass Act, 1871

For the present context it is not necessary to analyse the implementation of each and every law, mainly because the historical context in which these laws were legislated was different. The legal framework with reference to the present concern needs to be looked at more carefully. The current major concerns are production for industrial purposes, use of degraded forests and wastelands through JFM and other schemes and conservation of the rapidly decreasing wild flora and fauna. This Report addresses these concerns and other relevant ones in their total complexity.

Use of Degraded Forest Laws

For UP plains the implementation of the Forest Conservation Act and the Industrial policy require some rationalisation. The objective of the Forest Conservation Act is to protect the demarcated land under Section 4 of the Indian Forestry Act from encroachment and misuse, but not to merely make the land out of bounds for forestry work in general. Keeping in mind the aims of the National Forestry Policy the rationalisation required is that the degraded forest lands should be made available for Joint Forest Management and community woodlots, where necessary. The changes on use of the forest land to meet the needs of the local people require some consideration.

It may be recalled that several State Governments had in the past offered degraded non-forest lands, such as desert lands of Rajasthan and saline lands of U.P. and Gujarat, on lease to industry but the industry showed no interest. The scheme of the Rajasthan State Government was advertised in the newspapers in 1990-91 and a minimum of 2000 acres was offered on a long-term lease. The scheme of the U.P. State Government was initiated in 1979, but was given up after a few years for want of proposals.

It seems that the industry would like to invest their capital only where the cost of plantations is less than the cost of alternative supplies. Only good forest lands fulfill this criterion. These are also the lands which have the greatest bio-diversity and also maximum dependence of the poor.

It may be argued that the industry did not respond to the earlier offers because, in their view, productivity of the lands was not adequate. But the real reason could well be that industry has had access to alternative and cheaper sources of raw material from forests, and hence no incentive to turn to alternative sources of supply. Until recently, supply at concessional rates has been a standard practice. In Madhya Pradesh, in 1981-82, industrialists paid the Forest Department Re.0.54 for a 4 metre bamboo, while forest dwellers paid a little over Rs.2.0. The U.P. State Forest Corporation had calculated that during 1983-84, the actual cost of raising eucalyptus in government forests was Rs.220 per tonne, whereas it was supplied to the Saharanpur Paper Mill at Rs. 196 per tonne. The market rate for equivalent quality of eucalyptus, as judged from the auction prices, was between Rs.500-700 per tonne during the same period. Although the element of subsidy has been reduced lately it still continues in many forms. Bhabbar grass is sold by the UP State Forest Corporation at Rs.72.50 per quintal to rope makers, but to the industry at Rs.40 per quintal. In Andhra Pradesh, the price that the Forest Department realised by selling bamboo in the open market ranged from Rs.800 to Rs. 1200 per tonne in 1990-91. As against this, the industry was supplied bamboo at Rs. 500 per tonne.

It is well documented that the market for industrial raw material is totally distorted by the present system of committed supply from government forest at concessional rates. Its impact can be summed up as follows:

- (i) It leads to creation of over-capacity and inefficient use of raw material by the industry, thereby preventing its technological upgradation.
- (ii) Price difference between the open market prices and concessional rates leads to undesirable practices. There

are reported cases of concessional supplies being siphoned off to the open market.

- (iii) Arbitrary fixation of supply/quotas and prices for the industry encourages corruption within the Forest Department. At the same time, the State Government loses valuable revenue.

So long as these price distortions are not corrected there will be no incentive to the industry to invest in arrangements for obtaining its requirement of raw material from sources other than the forest department.

Two major assumptions for continuing supply of resources from State forests are (i) the industry is facing a shortage of raw material and (ii) that farm-forestry cannot produce the industry's requirement of raw material as was laid down in the NFP (1988). These are serious assumptions which, if accepted, would totally reverse the policy prescription of NFP (1988) and hence need to be examined carefully.

The current utilisation of wood and bamboo by the paper industry is 3.2 million tonnes (MT), whereas the demand has been assessed at 6.4 MT by the industry. Considering that there is no perceptible shortage of paper in the country, and only about 1 million tonnes of newspaper grade pulp is imported, the figure of 6.4 million tonnes seems to be an exaggeration. Even if it is taken as correct, and assuming a low productivity of 3 tonnes per hectare per annum, the requirement can easily be met from 2 million hectares of land. As against this, there are 141 million hectares of cultivated land and 15 million hectares of farmer owned uncultivated and degraded non-forest lands in the country. These lands have the potential of producing pulpwood, especially in view of the fact that both eucalyptus and bamboo are short rotation crops, eminently suitable for the farm forestry sector. In fact, with the progress made by the country in the last 15-20 years in promoting farm-forestry it is difficult to believe that the farm forestry sector is incapable of producing raw material for the industry. On the contrary, the supplies, from the farm forestry sector have

outstripped the demand resulting in severe price fall as would be evident from the following analysis.

As is well known, farmers have shown great enthusiasm for planting eucalyptus. However, as the demand from other sectors for farm wood was not enough and industry preferred subsidised supplies from the government, prices started falling. In Haryana, the total consumption of poles for construction by households in 1985-86 was 66,090 cubic metres, which is only 2.3 per cent of the total supply of 3 million cubic metre wood from farm forestry. The Haryana Paper Mill was buying eucalyptus from the farmers at Rs. 440-460 a tonne at the factory gate in 1986, but not only did the price come down to Rs. 330 in 1988, the factory also started imposing a quality cut of 10 per cent, reducing the effective price to Rs. 300 only. If inflation of 8 per cent is taken into account, the fall in prices during 1986-88 amounted to almost 40 per cent.

Increased production of eucalyptus on farms even affected the price of eucalyptus emanating from government forests. The floor price of standard eucalyptus poles, i.e. of 3145 cm. girth and 4.5 to 6.5 cm length, and of logs in U.P. from 1983 to 1990 is given in Table 1.

Table 1 : Year-wise fluctuation in the price of eucalyptus poles and logs auctioned by UP Forest Corporation

(Prices in Rupees)			
Year	Pole Price per piece	Log Price Per cu.m.	Retail general price index
1983-84	20 (49)	625 (81)	265
1984-85	31 (71)	741 (89)	284
1985-86	43 (90)	859 (94)	315
1986-87	50 (100)	955 (100)	328
1987-88	55 (98)	823 (77)	366
1988-89	55 (89)	810 (69)	405
1989-90	55 (81)	787 (61)	445

(Office of the U.P. State Forest Corporation, Lucknow)

Note:- figure in brackets show the price in real terms, taking the price in 1986-87 as 100.

It will be seen that, between 1986-87 and 1989-90, the pole price realised in the auctions has gone down in real terms by about 20 per cent, and the log price by 40 per cent. This fall was unprecedented, as prices in the past had consistently risen.

If the prices have fallen over time, this can hardly be evidence of shortage of raw material; even conceding market imperfections, the situation is more indicative of available raw material not being picked up by the industry for one reason or the other. A pertinent question that arises in this context is, if industry produces its own raw material from industrial plantations on government forest lands under the proposed scheme, who would farmers sell to? Where is their market, if not industry? Any afforestation by industry on degraded forest lands will be at the cost of tree planting efforts by farmers on privately owned degraded lands and other lands like homesteads etc.

Between the two extremes of privatisation of forests and centrally controlled management, it should be clearly accepted that there is need to find a proper solution to the raw material need of the industry. If the raw material becomes available, the industry, it is argued, will be able to utilise its present unutilized capacity, it will be able to make available wood based products for which there is a demand in the market. Also, the drain on the country's foreign exchange reserves from importing wood-based raw material would be reduced. Before a proper solution is generated and legitimate need and role of industry is defined, it is necessary to briefly review the socio-economic context in which the solutions are to be discovered.

First, it is necessary to understand that the main issue in the management of degraded forest lands, is that of right of access and use of resources by the local people and their cattle. The argument that only 2 million hectares out of 64 million hectares of government forests need be given to industry is of no consolation to those local forest dwellers from whom their life support system will be snatched away.

Secondly, most degraded forests have extreme biotic pressure, and often have rights of the people recorded on such

lands. Given the social and political conditions it will be impossible to extinguish such rights or to reduce biotic pressure. Already, in many protected areas reserved for biodiversity and wildlife, the government is finding it difficult to deal with people's rights to resources. If land is used by industry, such problems will multiply manifold.

Thirdly, degraded forest lands don't require capital investment and better technology but protection and recuperation, which is possible only by working with the people for which industry has neither expertise nor patience. The West Bengal experience shows that about 2500 peoples forest protection committees have regenerated nearly 350,000 hectares of sal forests at no extra investment, simply by protection on the promise of sharing wood and non-wood products with them. In fact, under the joint forest management rules, approximately 70,000 hectares is now ready for harvest and to buyers at right prices. The essential point, however, is that when the forests are jointly managed by the forest departments and local communities it will serve both the purposes, i.e. (i) fulfilment of subsistence requirement of community and (ii) production of surplus commercial wood for industry.

On the other hand, there is also a great need of appreciation for private farmers initiative. The Indian farming community has demonstrated that with support from the government they can produce foodgrains in a cost-effective manner. Whereas India produced 50 million tonnes of foodgrains in 1950, the output of foodgrains in the country in 1993-94 was of the order of 182 million tonnes. Consistent with this trend there is sufficient evidence to show that the Indian farming community can also produce wood-biomass to meet the industry's requirement. Linking of Poplar growing farmers with WIMCO match factory in north U.P. is one example. This experiment shows that, with technological backup, timber size trees suitable for sawing can be raised on farm lands within 8 years. In fact, due to the farmers' enthusiasm for growing Poplar, its enhanced supplies have led to establishment of several plywood factories in that area, thus providing considerable

downstream employment. Improvement in technology and extension is required for all farm forestry species, so as to result in production of thicker logs suitable for sawing.

The recent upsurge in the number of companies offering private teak plantations to the urban rich is well known. This may be the only example in India where urban private capital is getting invested in rural areas; generally, the flight of capital has so far been only from the rural to the urban sector. Paper and plywood industry, if desirous of acquiring large chunks of degraded forest land to take the advantage of economy of scale should seriously look at the experience of such private sector initiatives. It is a myth that industry cannot deal with farmers directly. For several crops like sugarcane, potato, rice, cotton, etc. industry has been in touch with farmers for decades.

It has also been suggested that farmers should produce fuelwood for their own consumption, leaving industrial wood to be produced by government or by industry themselves. The experience of the last 15 years shows that farmers through the farm forestry are more interested in producing for the market. The market price of fuelwood does not make its production on farms an attractive financial proposition in countries with large open access lands and extensive poverty. Further the entire arable land in green revolution areas is devoted to high cost commercial farming. Farmers would always prefer to use their lands for high value output such as industrial raw material. Thus, fuelwood will continue to have to be made available from public lands, including the forest lands and adjoining village settlements. Growing fuelwood is not a financially viable alternative for farmers.

A feasible solution

In this light, the solution seems to be as follows:

- (a) A mechanism for effective marketing of surplus industrial timber coming from forests protected by people under Joint Forest Management. The UP Government's efforts to formulate and notify JFM are a step in the right direction. The approach adopted in this

Notification, however, will not do. The operational scheme requires detailed consideration and hence it is discussed separately in the next section of this report.

- (b) A deliberate policy to promote industry-farmer linkage through farm-forestry and adequate financial support from NABARD.
- (c) Efforts to streamline FDCs and increase in productivity of plantations under their control.
- (d) Streamline the industrial policy by lifting the ban on felling and trade in Social Forestry areas.
- (e) Rationalise the implementation of the Tree Protection Act of UP and other government rules such as banning of all felling upto 1000 metres in the hills, so that felling can be limited and regulated in areas close to national forests and liberalised in all other agro-forestry, farm forestry and community woodlots areas.
- (f) As argued, degraded forest lands need not be handed over or leased to the industries. These will have to be worked upon by the Forest Department. A different type of legal arrangement for JFM needs to be worked out between the industries and forest department for degraded forest lands which are under the present JFM scheme, such that the interests of both the local people and the industries are safeguarded.

Recommendations

1. Farm forestry and community woodlots along with Agro-forestry need to be promoted by modifying the U.P. Tree Protection Act, so that the restrictions apply only in areas close to National Parks and Sanctuaries or ecologically fragile areas. For all other areas under farm or Agro-forestry and degraded forest land areas where JFM is not being implemented, liberal rules and policies need to be adopted.
2. Arbitrary bans, such as the government order to ban all felling upto 1000 metres need to be rationalised. Such bans

should be on a scientific basis such as slope gradients or ecological fragility.

3. The Indian Forest Act, as applicable to UP, was passed in 1927 when the forest situation in the State was very different. There is a need to draft a totally new type of Forest Bill, get it discussed in various forums and then get it legislated.
4. There is also a need to make a different type of JFM agreement with the industries. The government must engage itself in drafting such a notification and implement it for commercial forestry.

Joint Forestry Management

Regarding the forest project in U.P. the most significant points that needs to be taken into consideration are the far reaching constitutional and legal changes that have been brought about in 1992 by the Central and State Governments. Prior to these constitutional and legal amendments the JFM Notifications passed by different states had a different significance. They encouraged formation of village level communities and participatory management in a situation in which the legally recognised village level community, namely, the panchayats, had a lesser role to play in the management of community resources. Since 1992, a very important change has been brought about which necessitates a total rethinking of the legal regime relating to JFM. This change concerns the process of nationalisation, on one hand, since the Central Government itself has taken up the task of constructing and creating a new type of village level communities (through the constitutional amendment), and also the process of democratization, on the other hand, since the constitutional change mandates empowering of the panchayats etc., through state level legislations. Most states, including U.P., have now legislated a new panchayati law which empowers this village level community to manage the local natural resources, as well as directly receive and monitor the development funds. These changes do not, in the least, imply that JFM is not possible.

What it means is that an altogether different type of legal regime would have to be brought about to enable joint management of forestry. Keeping this new nationalisation and democratization process in view, it would be wiser to seek new legal alternatives which follow this direction than to attempt to follow the line of the pre-1992 JFM notifications.

The different type of legal arrangement that needs to be made to make JFM successful is explained in the subsequent section. To begin with, the major constitutional changes that have been made in India need to be noted first.

Constitutional Amendments Relating to JFM

Significant aspects of the Constitution (73rd Amendment) Act, 1992.

- i) Insertion of a new Part ix (Article 243 of the Constitution of India) New definitions of : a) "district"; (b) "Gram Sabha"; (c) "intermediate level"; (d) "panchayat, (Art. 243B); (e) "Panchayat Area"; (f) "Population"; (g) "Village".
- ii) Through this amendment the functions and constitution of "gram sabhas" has been designated clearly and specifically for the first time.
- iii) This amendment, for the first time, designates a "panchayat area" on the basis of population (7 to 5 thousand people).
- iv) It provides for representation for elections in the ratio of one person for every 500 persons, and not on the basis of number of villages.
- v) Under Article 243 of the Constitution, for the first time, seats for local representation are reserved for women, scheduled caste and tribes.
- vi) It limits the life of any Panchayat to five years. Hence, after every five years, the election and constitution of a new panchyat is legally mandatory.
- vii) In accordance with Article 135 of the Constitution this amendment empowers the Panchayat to directly receive

and use all development funds and gives wide ranging powers for taxation to earn revenues. Funds for forestry work relating to village level communities need not go through the FD.

viii) The amendment necessitates setting up and running village level courts to resolve local level conflicts.

Consequent to this 73rd Constitutional amendment the U.P. Government has legislated the "U.P. Panchayat Raj Acts and Rules, 1992" to put the above mentioned aspects into force, and which over-rules the earlier Panchayat Act of 1947.

Impact of the U.P. Panchayat Act on JFM

The forestry projects planned on the basis of the earlier JFM notification are faced with the following three problems which they have not addressed, and which will become significant in due course of time due to the new Panchayat Act:

- i) The Indian Forest Act recognises the rights of all villages, based on land records (Khatauni). The new Panchayat Act defines villages in terms of population. The JFM notifications, on the other hand, creates rights for the limited Village Forest Protection and Management Committees (VFPMC). This is a total mismatch. In this situation the rights over forest resources will belong to all villagers (vide the Indian Forest Act) and the final power to distribute the benefits belong to the Panchayat (vide the new Panchayat Act) and not to the Forest Department (through its JFM notification). The VFPMC cannot have a privileged position or power with respect to the panchayats.
- ii) The JFM Notifications create a new "Forest Fund" which can be put in the bank for future development or regeneration of forests. The overriding power for all funds generated through or from community resources is vested in the Panchayat, vide the old and new Panchayat Act. The Panchayat, therefore, has the legal power to call for and assimilate all community level funds, whether generated or received, and utilise them

for any village level work it deems fit, under the Panchayat Act. The distribution of benefit sharing and creation of forest funds, as provided in the JFM notifications, is violative of the Panchayat Act and is not enforceable.

- iii) The forest areas in which the VFPMC will work (and have rights over the resources and generated funds, as per the JFM notifications) are not coterminous with Gram Sabha areas. Establishing special rights on the protected areas for the VFPMC comes in direct conflict with rights of other villagers. The conflict can be resolved only by the Panchayats. In case the work plan areas fall between two Panchayats the matter will have to be taken up at the district (tehsil-level or the State level). Evidently, the work-plans under the JFM can take care that the VFPMC's are limited to the gram sabha areas. This, however, does not solve the problem since the Indian Forest Act recognizes the customary rights of all villagers in the Panchayat area. In such a situation it would be more practical to go along with the modern nationalisation and democratisation process than to resurrect something from the past. It must be noted, that even if the traditional forest protection communities are given an independent legal form and status, by registering them as "societies" under the Societies Registration Act, the three problems mentioned above still remain.

Legal Alternatives

Having noted the basic legal issues we need to now turn to the legal alternatives that will make JFM possible.

The first point to note is that in the light of the Constitutional Amendment and the political thrust, including that of the Panchayat Act of 1992, the existing legal arrangements under the present JFM notification in other States is grossly inadequate to serve the needs.

The second important point, evidently, is that JFM is still required and projects cannot succeed without it. Hence a different type of legal arrangement needs to be made.

Given the empowerment of the panchayats or the legal entity, capable of both receiving forestry funds and regulating the benefit from the resources, the legal arrangement now needs to emanate from the Panchayats and not the Forest Department. In other words the JFM arrangement now needs to be notified by the Panchayat Departments (Ministry of Rural Development), notwithstanding which, the Panchayats are legally capable of making their own legal arrangements (through a contractual agreement) with the FD to carry on JFM work.

The VFPMCs, similarly, need not be notified and constituted by the FD. They can be brought into existence under the U.P. Panchayat Raj Act and Rules, which empower them to set up such special committees for specific purposes. (Section 29 of the Act).

There is an obvious advantage in setting up the VFPMCs under the Panchayat Act. They would already have a legal status and be a statutory body capable of directly receiving development funds, rural credits (under NABARD) etc., which the VFPMCs under the JFM notification of the FD are not capable of. Such bodies would merely be quasi-legal entities formed under the administrative orders.

The VFPMCs need to be formed by a Resolution passed by the Panchayat. The Agreement between the FD and the Panchayats can either be individual and specific agreements, legally binding on both parties, or the FD can issue a new (different type of) JFM notification, stating that those Panchayats which are agreeable to follow the conditions set in this notification can enter into a contract with the FD, provided they have first passed the requisite Resolution.

Recommendations

This Report includes legal drafts of both the Agreement/ Notification and Resolution, which need to be considered and

taken up by the FD and Panchayats respectively. The Resolution and Agreement when passed and agreed upon by the Panchayat and the FD, can make JFM possible within the bounds of the present legal regime and political thrust. The drafts are attached herewith as Appendix I and II (Appendix I : Agreement/Notification; Appendix II : Resolution to be passed by Panchayats).

[Contractual agreement between U.P. Forest Department and Panchayat, on Court Stamp Paper]

Agreement between UPFD and Panchayat
For Joint Forestry Management

This indenture made this _____ day of ____ 19 (one thousand nine hundred and _____) between the Government of U.P. (hereinafter called the "Governor") on the one part and _____ Panchayat of _____ (hereinafter called the "Beneficiary") on the other part witnesseth as follows:-

1. That the beneficiary is authorised to execute this indenture and execute any works under this indenture to be done by the Panchayat.
2. That the beneficiary agrees to hand over land in the annexed schedule to the Divisional Forest Officer (hereinafter referred to as the Forest Officer), where the land is vested in the Panchayat, or work on the designated land where the land belongs to the Forest Department, for raising plantation of suitable species, with intimation to the concerned Block Development and Panchayat Officer, within 15 days.
3. The Beneficiary affirms that the Panchayat/Forest Department, as the case may be, has the absolute right to the land described in the appended schedule.
4. That the Forest officer will determine the species in consultation with the Beneficiary and VFMPC and raise the plantations at his own cost.
5. That the Forest Officer will be responsible for establishment and maintenance of the plantations for six years including the year of formation and will

intimate the Beneficiary that his responsibilities as laid down in clause 6 of this indenture shall commence.

6. That the Beneficiary shall-
 - a) Protect the plantations.
 - b) Maintain and manage the plantations after 6 years, or as directed by the village forest committee.
 - c) Refrain from using the land under plantations for any other purpose including mining unless permitted by the Forest Officer.
 - d) Accept and implement all directions of the Forest Officer regarding protection, maintenance, management and harvesting of plantations.
7. That the Forest Officer or his Assistant or any person duly authorised by the Forest Officer in this respect, shall be entitled to enter upon the said land for purposes of raising, maintaining, managing and inspection of plantations and for any other purpose considered relevant to these plantations by the Forest Officer.
8. The Forest Officer will provide training to the villagers to be nominated by the Panchayat VFMPC in the techniques of raising and maintaining nurseries and plantations.
9. The villagers will be permitted-
 - a) To remove fruit, flowers, collect dead wood, fodder leaf and cut and carry grass free of charge, provided, the Forest Officer may, at his discretion and after discussion with the Panchayat, prohibit some or all these privileges for the establishment and improvement of the plantations.
 - b) To collect, at each thinning, and final fellings at such rate and such price as may be determined by the Panchayat, fuelwood, poles and small timber, subject to availability.

Provided, the privileges mentioned under sub-clause a & b shall be exercised in accordance with a scheme for distribution

and/or sale of the forest produce, arrived at by the Panchayat on the recommendation of the VFMPC with the assistance of the Forest Officer.

10. That subject to any direction issued by the Forest Officer for management of plantations, the Beneficiary will be entitled to harvest the tree crop at the rotation age in accordance with the management plan jointly prepared by UPFD and VFMPC. The Beneficiary, VFMPC, shall be entitled to sell such produce after assessment of its value by the FD, preferably for bonafide, local and domestic consumption.
11. That the Forest Officer shall continue to render technical advice and assistance to the Beneficiary regarding maintenance, management and protection of plantation through the rotation and such directions shall be binding on the Beneficiary.
12. That if the beneficiary fails to carry out any of the directions issued by the Forest Officer under this indenture or any of its obligation which the Beneficiary is bound to discharge, the Forest Officer shall carry out at discretion any or all the works regarding protection, maintenance and management of plantations at the cost of the VFMPC, provided a notice of 15 days is issued to the Beneficiary to that effect.
13. That all tools, plants, stores, machinery and materials used on creation, maintenance, protection and management of plantation shall be property of the government.
14. That the Governor does not hold himself responsible for the success of plantations nor for any monetary return from the said plantations and will not be liable to any damage or loss occurring to the beneficiary as a result of creation of plantation on the said land or on account of any action of the Forest Officer.
15. All disputes and differences arising out of or in any way touching or concerning this indenture shall be referred to the sole arbitration of the forest officer

concerned. The award of such arbitration shall be final and binding on the parties to this indenture. The Beneficiary will have no objection to such appointment.

16. That it is agreed that the stamp will be, if any, on this indenture and shall be borne by the Governor.

17. In witness whereof, the parties to this agreement have hereunto set and inscribed their hand seal on the dates hereinafter mentioned respectively.

Signed, sealed, and delivered by the said

on the _____ day of _____ 19
(One thousand nine hundred and _____)

Witness

1.

2.

Signed, sealed and delivered by the _____
on this _____ day of _____ 19 (one thousand nine
hundred and _____) on behalf of the Governor
of U.P. and acting under this authority.

Schedule of land

Name of the panchayat	Mauza	Tehsil	Distt.	Khara Nps.

Resolution to be passed by the Panchayat

This Resolution made this _____ day of
_____ 199 (One thousand nine
hundred and ninth _____) by the Panchayat of _____
(hereinafter called the "Beneficiary" witnesseth as follows:-

1. That the Beneficiary is authorised to execute this Resolution and execute any works under this Resolution to be done by the Panchayat.
2. That the Beneficiary agrees to hand over land in the annexed schedule to the Divisional Forest Officer (hereafter referred to as the Forest Officer), where the land is vested in the Panchayat, or to work on the

designated land where the land belongs to the Forest Department, for raising plantations of suitable species, with intimation to the concerned Block Development and Panchayat Officer, within 15 days.

3. The Panchayat shall appoint a Sub Committee, called the Village Forest Management and Protection Committee (hereafter called the VFMP) for forestry work on the designated lands, in accordance with the powers conferred on the Panchayats vide Sections 29, 30 of the U.P. Panchayati Raj Act 1947 and Rules, 1992.

- (i) The VFMP shall be constituted of 13 members, which will include the Sarpanch as head of the VFMP, the Forest Ranger/SDO or any person duly designated by the Divisional Forest Officer, the Gram Sachiv (hereafter referred to as the BDO), 6 women residing in the village and who cultivate or use the common lands for fuel or fodder resources, and 4 co-opted members at least one of whom belongs to the Scheduled Caste or Tribe category. One of these members shall be designated as the Forest Protection Guard. The VFMP shall be an Executive Committee of the Panchayat. All male and female members, eligible to be members of the Panchayat shall be deemed to be members of the general council to which the VFMP will report.
- (ii) The VFMP shall be authorised to execute an indenture to be done by the Panchayat.
- (iii) After the concurrence of the concerned Block Development and Panchayat Officer, the VFMP shall agree to enter into an agreement with the Divisional Forest Officer (hereafter referred to as the DFO) for raising plantations of suitable species and other vegetation and maintenance of the common lands. The cost of all operations related to raising of the plantations shall be borne by the DFO.

4. The beneficiary affirms that the Panchayat/Forest Department as the case may be, has the absolute right to the land described in the appended schedule.
5. That the Forest Officer will determine the species in consultation with the beneficiary and the VFMP and will raise the plantations at his own cost.
6. That the Forest Officer will be responsible for establishment and maintenance of the plantations for six years including the year of formation of the VFMP and will intimate the Beneficiary that his responsibilities as laid down in clause 6 of this resolution shall commence.
7. That the Beneficiary shall-
 - a) protect the plantations after 6 years, or as decided by the village forest management and protection committee.
 - b) Maintain and manage the plantations after 6 years, or as decided by the Village Forest Management and Protection Committee.
 - c) Refrain from using the land under plantations for any other purpose including mining unless permitted by the Forest Officer.
 - d) Accept and implement all direction of the Forest Officer regarding protection, maintenance, management and harvesting of plantations.
8. That the Forest Officer or his Assistant or any person duly authorised by the Forest Officer in this respect shall be entitled to enter upon the said land for purposes of raising, maintaining, managing and inspection of plantations and for any other purpose considered relevant to these plantations by the Forest Officer.
9. The Forest Officer will provide training to the villagers to be nominated by the VFMP in the techniques of raising and maintaining nurseries and plantations.

10. The Villagers will be permitted-

- a) To remove fruit, flowers, collect dead wood, fodder, leaf and cut and carry grass free of charge. Provided, the Forest Officer may, at his discretion and after discussion with the Panchayat, prohibit some or all these privileges for the establishment and improvement of the plantations.
 - b) To collect, at each thinning, and final felling at such rate and such price as may be determined, by the Panchayat, fuelwood, poles and small timber subject to availability. Provided, the privileges mentioned under sub-clause a & b scheme for distribution and/or sale of the forest produce, arrived at by the Panchayat on the recommendation of the VFMPC with the assistance of the Forest Officer.
11. That subject to any directions issued by the Forest Officer for management of plantation, the Beneficiary will be entitled to harvest the tree crop at the rotation age in accordance with the management plan jointly prepared by UPFD and VFMPC at the time of handing over the plantation. The Beneficiary, VFMPC, shall be entitled to sell such produce after assessment of its value by the UPFD, preferably for bonafide, local and domestic consumption.
12. That the Forest Officer shall continue to issue directions and render technical advice and assistance to the Beneficiary regarding maintenance, management and protection of plantation throughout the rotation, and such directions shall be binding on the Beneficiary.
13. That if the Beneficiary fails to carry out any of the directions issued by the Forest Officer under this resolution or any of its obligation which the Beneficiary is bound to discharge, the Forest Officer shall carry out at his discretion and/or all the works regarding protection, maintenance and management of

plantations at the cost of UPFD provided a notice of 15 days is issued to the Beneficiary to that effect.

14. That all tools, plants, stores, machinery and materials used on creation, maintenance, protection and management of plantations shall be property of the government.
15. That the BFD does not hold itself responsible for the success of plantations or any monetary return from the said plantations and will not be liable to any damage or loss occurring to the Beneficiary as a result of creation of plantations on the said land or on account of any action of the Forest Officer.
16. All disputes and differences arising of or in any way touching or concerning this Resolution whatsoever shall be referred to the sole arbitration of Forest Officer concerned. The award of such Arbitrator shall be final and binding on the parties to this resolution. The Beneficiary will have no objection to such appointment.
17. That it is agreed that the stamp will be, if any, on this resolution and shall be borne by the Governor.
18. In Witness whereof, the parties to this agreement have herunto set and inscribed their hand seal on the dates hereinafter mentioned respectively.

Signed, sealed and delivered by the said _____
on the _____ day of 19____ (one
thousand nine hundred and _____)

Witnesses :

- 1.
- 2.

Signed, sealed and delivered by the said _____
on the _____ day of 19____ (One thousand
nine hundred and ninty _____) on behalf of the
Governor of U.P. and acting under this authority.

Schedule of land.

Name of the panchayat	Mauza	Tehsil	Distt.	Khara Nos.

Chapter Three

POLICY AND INSTITUTIONAL ISSUES FOR BIODIVERSITY CONSERVATION IN UTTAR PRADESH

Introduction

At present, the State of UP has seven National Parks, twenty-nine Sanctuaries and twelve Wetland areas as bird sanctuaries. These Parks and Sanctuaries are under severe biotic and commercial pressure. The settlement of rights has not been done in many sanctuaries and the legal framework for Wetland areas is still to be properly constructed. The provisions of the Wildlife (Protection) Act 1972 and their erroneous application have only succeeded in alienating the local people from protection of forests and Wildlife.

The conservation of India's sensitive biological habitats has become a matter of national priority and is in need of urgent exclusive attention. The protection of these habitats calls for a disaster management strategy. India has already lost about 80 per cent of its original habitat for biological diversity and has about 4 per cent of its land under protected area network. Of these, less than 1 per cent of the land mass is under National Parks. It will be a great tragedy if we are not able to conserve even this minimal genetic diversity for the present and the future generations of Indians and the global community.

The conservation of such habitats calls for serious rethinking because we also fully accept and realize the immediate dependence of a large human population on these biological resources, and the likelihood of their further impoverishment due to the depletion of the natural resources. The internal and external biotic pressure on the carrying capacity of such habitats conflicts with the equally important need for protecting the human, cultural and environmental rights of the affected people.

In such a situation a cautious and balanced approach is required. Any dogmatic or arbitrary action can delay the protection of the parks and sanctuaries and cause further damage to both the wild flora and fauna as well as to the people residing in such areas.

This analysis is divided into two parts. The first outlines the existing legal framework, in the context of the conflicting interests, and the second which considers the legal alternatives and the most balanced legal approach available or desirable under the circumstances.

Part-I

A. Problem has arisen due to :

- Reduction of Wildlife Habitats (of Flora and Fauna).
- Increasing Biotic Pressure (Human and Cattle)
- Increasing demand on Resources (Life-styles)
- Implementation of conflicting natural resources policies and laws.

Demand on resources creates conflicts of claims between:

- | | |
|---|--|
| (i) National/International Remote Requirements (NR) | (ii) Requirements of Local People (LR) and (iii) Requirements of Wild Fauna Flora (WR) |
|---|--|

B. Conflict has arisen due to:

- Conflicts between resource use laws which often override the powers given under resource conservation laws.
- Conflicts between rights granted or settled (of the local people) under other laws (e.g. under the Constitution, Forest Act, Easement Act, etc.) and the recent needs for conservation. These provide grounds for litigation.
- Lacuna in the Wildlife Act, 1972, or its improper or incomplete application or administration.

C. Existing Legal Framework for realization of claims of the three groups.

The overall legal framework which relates to the interests of these three conflicting interests and the coverage :

Resource Requirements	Legal Coverage			
	Acquisition	Use	Conservation	Regeneration
a) NR	W	W	P	N
b) LR	P	P	N	P
c) WR	N	N	N	N

P = Partially covered

N = Not covered

W = Well covered

Let us turn to briefly look at the existing legal regime, whether it partially, fully or at all covers the interests of the external people, local people and the *in-situ* flora and fauna.

- a) As concerns the interests of the external people, there are a whole range of laws which relate to land, trees, minor forest produce, mines and minerals, natural waters, etc. These can be utilized to acquire the resources. These laws are more powerful, both in terms of numbers as well as in terms of the powers they give to the officials for enforcing such laws.

Table-I mentions some of the national and state laws available for acquisition or regulation of resources from biologically rich land and water areas.

Table-I is followed by two groups under the heading 'Constitutional & Statutory rights' which depict the powers available under such laws. These have been calculated in terms of the jurisdictional, financial and decision making powers available to the concerned officials for the regulation or acquisition of resources.

- b) Let us turn now to outline the legal regime safeguarding the rights of the local people, including their rights over the resources. In this context we shall limit the consideration to the laws applicable to the tribals or forest dwellers, since the majority of those

residing in the National Parks and Sanctuaries are tribals or forest dwellers.

Table I

- Indian Forest Act (1927)
(Allows cutting down forests by the State by permission and plans.)
- Forest Conservation Act (1980)
(Allows cutting down forests by the State by permission and plans.)
- Land Acquisition Act, 1894
- The Urban (Land Ceiling And Regulation) Act, 1976
- The Mines Act, 1952
- The Mines and Mineral (Regulation and Development) Act 1957
- Coal Mines Conservation and Development Act, 1974
- The Marine Product Export Development Authority Act, 1972
- The Merchant Shipping Act, 1959
- The Insecticides Act, 1968
- The Insecticides Rule, 1971
- The Hazardous Waste (Management and Handling) Rule, 1989
- The hazardous Micro Organism Rules, 1989
- The Territorial Waters, Continental Shelf, Exclusive Economic Zone, And Other Maritime Zones Act, 1976
- Export-Import Policy 1993-97
- Environment Protection Act, 1986
(May 4th, 1994 Notification)
- Industrial Development Act, 1952

i) Constitutional Rights

Art. 19(1) Right to Reside

Art. 244(1) Entry 5 (Fifth Schedule)

Art. 242(2) and 275 [(1) (2)] Entry 3.
(Sixth Schedule).

These provisions create right to occupancy but not right over the resources.

Besides these, Art. 14 (Right to Equality) and Art. 21 (Right to life and livelihood including environment) can also be read as protecting the rights of the tribals and other forest dwellers.

ii) Statutory Rights

- The Easement Act, 1894 S. 15-18 recognizes customary rights over land and resources.
- Some state laws, such as the Madhya Pradesh Land Revenue Code, 1959, (S.233-238) recognize and establish customary rights over minor forest produce.
- Besides such rights, the Indian Forest Act 1927 (as adopted by the states) provides concessions over forest produce. Such concessions have the status of right.
- In some states there are laws concerning non-alienation of tribal lands.
- In International Law ILO conventions 104, 107 and 169 protect the resource rights of the tribals or local forest dwellers.

These constitutional and statutory rights provide grounds for litigation as well as entitlements for the local people.

- c) As regards the interests of the wild flora and fauna, there is basically only one law which indirectly generates some rights of occupancy, namely the Wild Life Act, 1927 (as amended upto 1993).

These are two other relevant laws, the Forest Conservation Act, 1980 and the Environment Protection Act, 1986.

Neither of these laws, however, creates any rights of Wildlife including occupancy rights over the habitats. They merely provide the power to the Central Government to give

permission to use forest lands for non-forestry purposes or to declare some regions as protected areas.

It must be noted that there are a number of international conventions and treaties relating to protection of Wildlife, to which India is a party. All such laws, however, are in effect, soft legal-policy declarations, because they neither create any rights for the wild flora or fauna, nor are justifiable in any court of law in India. Even usual elements of sanctions do not apply in the case of such laws. Table-II, in what follows, mentions the international conventions to which India is a party.

The Legal regime as related to biodiversity, in relation to the Wildlife Act, can be depicted as follows, to give an over all picture of the situation.

Issue	Resource		Domesticated Areas	
	Fauna	Flora	Fauna	Flora
In-situ Protection	p	p	N	W
Ex-situ Protection	P	P	N	N
Access	P	P	W	W
Use	W	P	W	W
Trade	W	W	P	W
Breeding	P	P	P	P
Augmentation	P	P	P	P
Release	N	N	P	N
Movement	W	P	P	P
Intellectual				
Property Rights	N	N	N	N

N = Not Covered P = Partially covered W = Well covered

Let us turn now to the problems that arise due to the shortcoming of the Wildlife Act and its implementation. There are various procedural problems. Only the most important substantive issues are mentioned here.

Wildlife and forests are in the Concurrent List of the Constitution. This implies that the states have the power to change their policy/law concerning wild habitats or sanctuaries. The Amendment to the Wildlife Act now provides that the states can change the boundaries by passing a

resolution by the State Legislature through a simple sitting majority. This has allowed various governments, such as Gujarat, Orissa and Maharashtra, to denotify sanctuaries and alter their boundaries in ways which destroy the habitats for Wildlife. This amendment to the Act has led to a Constitutional crisis which needs to be immediately set right if sanctuaries are to be safeguarded.

The settlement of rights of the local people, under S.24 (2) (C) of the Wildlife Act, has not been done in sanctuaries as yet. This creates a major problem in determination of occupancy or resource rights of the indigenous people.

Section 18 of the Wildlife Act, 1972 defines the sanctuaries as "forest lands". Subsequent amendments to the Act have deleted the words "forest lands". This has brought the sanctuaries outside the purview of the Forest Conservation Act, 1980, and the Centre's permission is not required for denotification. This change has brought about major problems in the protection of sanctuaries, such as the Narayan Sarovar in Gujarat and Sariska in Rajasthan.

The conservation practices and plans are operating with various terms which have no legal definitions, such as "Protected Areas", Tiger Reserves, "Biospheres", "Buffer Zones" etc. These create numerous problems.

PART - II

A; Considerations about the Legal Alternatives

- i) The first alternative is that one can amend the Wildlife Act, or legislate a new law, creating an absolute right of the government so as to give it powers to keep the local people out of the National Parks and Sanctuaries.

This strategy is legally problematic for two reasons. First, as noted earlier, there are both Constitutional and customary rights of the local people on the basis of which they can litigate, thereby retarding or prolonging the protective measures to such a degree that the goals become non-attainable, due to increased biotic pressure in the meanwhile or due to the depletion of the resources. Moreover, keeping in mind the immediate dependence of the local people on the resources,

such a strategy is undesirable, without making alternative arrangements for their livelihood.

The second reason why this legal strategy is problematic is that as per our constitutional arrangement, land, mines and minerals, water and sanctuaries are within the States' jurisdiction. In case the Central Government and the State Government do not wish to follow a similar policy or goal, there can be conflicts which are counter-productive from the point of view of protection of wildlife or the rights of the local people. In various cases of National Parks and Sanctuaries we find that although the Central Government or the people in general wish to protect or conserve the State Governments have given greater priority to exploitation of the area for mining, hydro-electric or other projects. Narayan Sarovar Sanctuary in Gujarat, the Bhitar Kanika National Marine Park in Orissa or the Sariska Tiger Reserve, are case in point.

- ii) The second legal alternative is to fully recognise or establish through law, the rights of the local people, and (in a sense) hand over the management of the resources and Wildlife to the community. Proponents of community rights would champion this strategy.

The problem with this strategy is that in the end it defeats the goal it attempts to achieve, namely the sustainability of the tribal autonomy or way of life and the freedom for economic options for livelihood. There are at least three clear indicators as to how and why this happens.

First, the creation of community rights makes such rights purchaseable. Without internal or external legal safeguards the community is unable to hold on to its rights, or out of ignorance or different perceptions of development sells or barter away such rights. We have seen how this has happened in the eastern parts of India, where despite the fact that community rights have been established, these groups themselves have sold away their resources and depleted the area. They have, evidently, weighed the importance of conserving the natural resources differently. On the other hand we notice that in 'Scheduled Areas', and also where tribal land

non-alienability laws apply, the local people have not been able to resist the exploitation by external forces. The lands have been sold away in "benami" transactions, and the resources have been exploited by external agencies, including the government itself.

There are also examples from "Social Forestry" where "village woodlots" or "Community Forests" have been handed over to the panchayats, or the local communities. Hardly any of these have survived the onslaught of external or internal market interests. All such experiences make it evident that mere establishment or recognition of community rights, despite the fact that such local people have been living in these areas since centuries, does not guarantee that in the modern context the rights of Wildlife or the Resource Rights of the local people will be protected. A paradigm shift in legal thought is required if the interests of the sanctuaries and the local people are to be safeguarded. In other words, what these experiences reveal is that recognition of group rights, whether that group is an ethnic one of a tribe, or an administrative one of a "committee" or a statutory one of a Panchayat, district or a state, does not in itself guarantee sustainability of the resources. Additional legal principles need to be invoked and implemented to attain this. As noted earlier, a balance of interests and powers seems to be the most efficacious way to attain the goals. Let us turn to explore now how such a balance of interests among the three can be achieved.

c) i) Interests of the State

The basic interest of the state is to retain sovereign rights over the designated sanctuary. In the interest of the conservation of biological diversity it should evidently not be interested in trade, transfer or use of the resources from such areas.

In the light of all this, the Wildlife Act needs to clearly prohibit all trade and transfer of Wildlife species by the state or any of its agencies and it also needs to declare that it is holding the National Park or Sanctuary as a trustee for the people of India. With these clear provisions in the Act the interests of the

state will be safeguarded. The state should also, evidently, not be interested in "developing" such areas. The Law must, hence, also prohibit all development activities in these areas.

ii) Interest of the Wildlife

The wild flora and fauna need to certainly stay in the habitat. That would be their first interest. To establish the peoples right to reside, Article 19(1) of the Constitution could be extended to apply to all living beings in the National Parks or Sanctuaries, or alternatively, the Wildlife Act could be amended to make the occupancy rights of the people non-alienable. The Act must also guarantee the right to resource for all living being in such areas.

iii) Interests of the People

Local people who have established occupancy/residence rights in law and are interested in staying within the parks and sanctuaries, need to be allowed to do this, with a clear understanding that there will be no development activities in such areas, such as schools, roads, electricity and other facilities or services. The Wildlife Act must clearly prohibit all development activities by the state or others in the Parks and Sanctuaries as well as in the buffer zone around such areas. The limits of the buffer zone must be clearly defined in law.

Where such bona-fide occupancy rights of non-tribals or outsiders who have recently migrated into the designated area, cannot be established, or those whose rights are genuine and wish to move out the Wildlife Act must clearly state that they will be rehabilitated and compensated for displacement. The Act must make the planning and implementation of rehabilitation and compensation mandatory and also prior to the full legal recognition of an area as National Park or Sanctuary.

In the light of all these considerations, there is an urgent need to prepare and implement appropriate Participatory Management Plans and Eco-development Projects which aim to co-restoration and protection within the National Parks and Sanctuaries and not merely in the buffer zones.

To bring about the requisite eco-development plans and strategies, including Environment Impact Assessment, there is a need for human resources development and capacity building Institutions such as the Wildlife Institute of India (WII), and Forest Research Institute (FRI), Dehra Dun. The Pollution Control Boards seem to be ill equipped for the task. There are reasons to believe that state management of such institutions has a negative effect. These institutions and other similar ones to be created in the future, need to be totally autonomous . Instead of being created through government resolutions they need to be under separate Acts making them independent in their function and structure.

Recommendations

1. Amend Section 18 of the Wildlife Act (WLA) to demarcate areas as Sanctuaries for which a prior scientific survey has been done to locate the actual areas of Wildlife habitation.
2. Amend Section 19 of the WLA to make it mandatory for the Collector to first inquire into the number of people who are the original or long term forest dwellers and then to explicitly recognise and declare their right to reside and exclude the rights of all others.
3. For all National Parks and Sanctuaries in U.P., complete the settlement of rights, wherever not done, at the earliest, (within the life period of this project).
4. In U.P. more than fifty per cent of the Wildlife live outside the Park and Sanctuary areas. Declare all such areas as Sanctuaries, with explicit recognition of the right to reside, of the original dwellers, as mentioned in the above recommendation.
5. Amend Section 36 of the WLA, relating to National Parks, and make the settlement of rights of the people similar to that of the Sanctuaries as mentioned here. The difference between National Parks and Sanctuaries must be in terms of the procedure for denotification and not in terms of rights. The WLA should say that National Parks can be denotified by the Centre only whereas sanctuaries can also be denotified by the states.

Chapter Four

LAW & POLICY FOR FORESTRY IN MADHYA PRADESH*

Legal Aspects Of Forestry In Madhya Pradesh

Introduction

The central and the state governments are seriously concerned with the depleting forest resources in India. Earnest attempts have been made in the last two decades to regenerate the forest resources to meet the industrial and the people's needs. New wings of the Forest department, such as the Forest Corporation and Social Forestry Wing, have been set up to take up this enormous task. Despite these efforts, however, the success has not been commensurate with the funds spent or the work done. This report looks at the forestry situation in a comprehensive way to seek the main reasons for the slow progress in forestry and then to suggest the alternatives that must be sought if forestry is to succeed on the scale desirable in the project.

Forestry, evidently involves various factors, one of them is the legal framework, for it is the law that sets the stage for what is permitted, prohibited and possible. The framework has to be of a kind which will allow the achievement of the objectives. In the Indian context this becomes extremely significant because the inherited legal framework is of a period when the nature of forestry work was very different from what is desired now. The aim of this work is to scrutinise the legal framework comprehensively with reference to some of the major legal issues involved in forestry work. Although the analysis has a bearing on the legal framework of other states in India too, since the laws have similar contents and policy, the specific legal framework for review here will be that of Madhya Pradesh. Since from the point of view of an integrated forestry

* With reference to the Integrated Forestry Sector Project.

plan this state poses many critical problems which are faced in other states too.

The scheme of presentation in this Report is as follows: Section - I presents the existing legal framework that governs forestry work in Madhya Pradesh at present, since before one can critically examine the legal framework it will be necessary to be aware of the provisions and their background. Section -II identifies some of the major issues and problems with the existing framework. It also discusses the legal alternatives and suggests the necessary steps that need to be taken. The legal alternatives are discussed along with the issues.

The Existing Legal Framework

The complex legal framework which concerns protection, conservation, acquisition and utilisation of the forest resources, both by the people and the state, can be classified into three aspects. These three aspects of the legal framework need to be understood separately to fully analyse and amend the regulations concerning forestry. These aspects, in their totality, constitute the existing legal framework.

- a) The first consists of the laws and policy which give the governments the power and the rights to utilize the natural resources, such as land, forests, minor forest produce, water and ores found in forest area. The basic questions here would be : first, are the powers and rights granted to the institutions, such as the Forest Department, the Panchayats, Cooperatives and the Forest Protection Committees correlated with appropriate duties to necessitate the execution of the desired forestry plan? Second, do the state laws and practices exhibit the national policy, such as prescribed in the National Forest Policy, 1988 or the policy mandated by the Constitution of India?
- b) The second relate to the laws and policy which give the people rights over common resources, such as timber, minor forest produce and water, under the Forest Act, or through customary law (nistar rights in M.P., for instance). The basic questions here are: are these rights appropriate or

rational in the context of the present ecological situation? Are they appropriate from the point of view of the basic economic needs of the local people? And most significantly, who should constitute the people entitled to these rights in the modern federal system? That is, how does one balance the rights of the people living close to or in the forest with those living far away from them?

- c) The third aspect relates to nature itself. Here the rights of the flora and fauna, in terms of their protection, conservation and well-being, are of utmost importance. The crucial questions are : are the laws for their implementation good enough for the protection, conservation or development of wildlife and the bio-genetic diversity? Are these rights equitable in relationship to the rights of man? Here the Wildlife Act, the Constitutional provisions, some central, state laws and international Conventions concerning parks and sanctuaries and forest villages play a crucial role.

Evidently, in this brief review of the legal framework governing forestry in Madhya Pradesh it is not possible to go into the details of all the issues mentioned in the three aspects above. For instance, the problems concerning land ceiling for farm forestry, or those concerning the working of cooperatives, are significant in the context of an integrated forestry practice. However, given that the scope of this review is limited it would be possible to touch upon only a few of the more basic issues. Some of these issues which need immediate attention, and which alone will be considered in this study in Section - II, are as follows:

- i) Problems concerning the national policy and the general framework of forestry laws in M.P.
- ii) Institutional issues, concerning the relationship between statutory bodies, such as the panchayats and the non-statutory bodies, such as the Forest Protection Committees.
- iii) Issues concerning peoples rights in forest resources, specially nistar rights.

- iv) Issues concerning people's right to reside, specially in village forests and national parks and sanctuaries.

Let us turn to first note, in specific, the laws that govern the three aspects of forestry mentioned above in Madhya Pradesh, and which will have to be taken into account if the legal framework has to be appropriately developed.

1) Rights and Powers of the State

i) Constitutional Powers

The power of eminent domain to acquire private land for forestry and other public purposes is provided through Article 31-A and 298 of the Indian Constitution. The power to make laws for regulation of forests is laid down by Entry 17A, in the IIIrd List (The Concurrent List) of the Seventh Schedule of the Constitution. This means that both the central parliament and the state legislatures are competent to make laws relating to forests.

ii) Statutory Powers

The eminent power to acquire and utilise private land is available at the state level through :

The Land Acquisition Act, 1894 (section 4). The power to declare any land (including public and common lands) as government forest land is provided through the:

Indian Forest Act, 1927 (as adopted by Madhya Pradesh). Besides the powers through the Indian Forest Act, the power to regulate settlements inside forests is governed by the :

M.P. Van Gram Niyam, 1977.

The power to regulate forest resources, such as timber, is provided through the :

Indian Forest Act, and also through :

M.P. Fixation of Rates for Timber and other Minor Produce (Extension) Rules, 1974;

M.P. Kastha (Viniyaman) Adhiniyam, 1984;

M.P. Kastha Chiran (Viniyan) Niyam, 1984;

M.P. Disposal of Timber and Forest Produce Rules, 1974;

M.P. Van Upaj (Vyapar Viniyamann) Adhiniyam, 1969, 1973; and the M.P. Van Upaj (Vyapar Viniyaman) Mantrana Samiti Tatha Mulya Prakashan Niyam, 1969.

The transit of timber and other forest produce is regulated by :

M.P. Transit (Forest Produce) Rues, 1961.

The minor forest produce, similarly, are governed by a number of acts and rules under them, the more important of which are :

The M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964; M.P. Tendu Patta Mantrana Samiti Prakashan Niyam, 1964; M.P. Van Upaj Other Than Timber (Vyapar Viniyaman) Niyam, 1969.

These laws create a state monopoly on the minor forest produce.

As concerns grazing on forest lands, the provisions of the Indian Forest Act, 1927, are further consolidated through the M.P. Grazing Rules, 1986. These rules allow the government to determine grazing rates which are over and above those prescribed by the Indian Forest Act.

It must be noted that in M.P. besides the forest laws, the forest lands are also regulated through the M.P. Land Revenue Code, 1959. The following sections are important :

Section 57 provides for state ownership on all lands for revenue purposes, including water and mines and mineral resources.

Section 108 mandates that the record of rights which are to be kept by the patwari.

Section 157-158 defines tenural classes.

Section 165 regulates rights of transfer of land.

Section 179 specifies rights to trees in private holdings.

Section 240 gives the Collector the power to prohibit cutting of trees (in public interest) on private lands as well as government lands.

Section 241 gives the Collector powers to prevent theft from government forests.

Section 242 gives the Collector the power to record customary rights (Waji-ul-arz) provided under the Easement Act, 1884. (Sections 2, 15, 18).

Encroachment of forest lands is a major problem in Madhya Pradesh. Such lands have often been regularised and given to the encroachers under political pressures. However, the giving of patta on forest lands is regulated in M.P. through the :

M.P. Van Bhumi Shashwat Patta Prati Sanharan Adhiniyam, 1973; and the

M.P. Van Bhumi Shashwat Patta Prati Sanharan Rules, 1974.

The Forest Conservation Act, 1980, gives the central government a power overriding those of the states in so far as the use of forest lands is concerned. It makes it necessary for the states to seek permission of the central government for any non-forest use of forest lands, including for encroachment and regularising as domiciled (abadi) areas.

It is important to note that these constitutional and statutory powers are interpreted by the governments only in terms of rights, without any correlated duties, that is, as absolute rights to use the forest land and resources in any way the government deems it proper. None of these constitutional provisions or statutes (including the Indian Forest Act, 1927) lay down any specific duty on the state to conserve the forests or use its resources equitably. Even the central Forest Conservation Act, 1980, only transfer the power of use to the central government, it does not lay down any duty on the central or state governments to conserve forests.

The Constitutional duty, that the central and state legislatures must lay down laws for the welfare of the people and (specifically) use the natural resources of the country for the common good (that is for the good of all people, including the local inhabitants) are explicitly laid down through Article 39 (b) and (c) of the Constitution. These Articles, however, form

part of what is called the Directive Principles of State Policy in the Constitution. The former legal theory, and the one that the governments still seem to like to hold on to, was that the Directive Principles are merely directives and hence not enforceable in any court of law. Within the last decade, however, the Supreme Court has clearly laid down in various court judgments (such as *Minerva Mills v. UOI*) that these principles are constitutional duties of the state and therefore enforceable in courts in the same way as the fundamental rights. In the case of violation of fundamental rights the courts have to enforce specific duties on other individuals or agencies. In the case of violation of Directive Principles, however, the courts have to enforce duties on the state, namely the legislators, planners or the government department who plan or execute projects. This is next to impossible within the present democratic structure since there is no agency who can check the state if it violates the mandate of the constitution or that of the courts. Given this situation, hardly any project planning, whether it be of specific projects or the national Five Year Plans, takes note of the constitutional mandate of the Directive Principles of State policy of the Constitution.

Besides the constitutional framework the only other direction available for work or project planning is the National Forest Policy, such as of 1988 or 1952 earlier. The Policy, however, has no legal binding on the state or the central governments, the work plans or contractual agreements on the use of forest resources has, therefore, had no relationship to the National Policies so far.

This outlines the legal framework from the side of the state briefly. Let us turn now to outline the legal framework from the perspective of the people.

2) Rights of the People

a) Constitutional Rights

Three basic constitutional provisions, all of which are fundamental rights of the people, directly apply in the forestry situation :

Article 14 - Equality before the law. This necessitates that legally no individual or group of people, such as the tribals, local forest dwellers, industries and others who use the forest resources, must be treated unequally.

Article 21 - Right to life and livelihood. This mandates that the people have a right to the basic environmental resources on which their life and livelihood are dependent.

Article 18 (i) - Right to reside. This provides for a fundamental right to reside in an area in which people have domiciled for long.

b) Statutory Rights

Legal rights of the people in forest resources and over forest lands (such as for forest villages) arise in various ways. These include :

Rights under the Indian Forest Act, 1927. These rights are those settled by the Forest Settlement Officer when demarcating or classifying a forest as reserved or protected, after notifying the area under section 4 of the Forest Act.

Rights under the Easement Act, 1884. These are the customary rights recognised under sections 15-18 of the Act, which include right to fuel, fodder, passage, including water rights and riparian rights.

Customary rights of the people, such as nistar rights, granted by earlier sovereigns and recognised under the statutes and by the courts.

The Madhya Pradesh Land Revenue Code, 1959, in its different sections recognizes nistar rights in the following ways:

Section 233 gives the Collector the power to prepare a record of all unoccupied land.

Section 234 provides for the preparation of Nistar Patrika by the SDO (the 1st Amendment of 1961 of the Code gives this duty to the Collector).

Section 235 and 236 regulate matters to be dealt with in the Nistar Patrika, namely:

- a) grazing rights.
- b) i) rights to wood, timber, fuel, forest produce;
ii) minor minerals;

Section 237 directs the Collector to set aside certain land for nistar.

Section 238 gives the power to the Collector to give nistar rights to another village which does not have its own common lands.

Section 239 makes the nistar rights inheritable to the next generation without payment of any royalties.

Rights of special groups, such as tribals, whose livelihood is dependent directly on forest resources, are also guaranteed under the international Conventions to which India is a signatory, such as under the ILO Convention.

3) Rights of Nature

The third relevant aspect of the legal framework consists of those laws which pertain to the flora and fauna directly. These are as follows :

The Wildlife (Protection) Act, 1972. Under this Act protection is given to a number of animals, birds, fish and plants which are specified in the Schedules to the Act. Since the Act prescribes a duty on the state to protect these creatures there arises a corresponding legal right that belongs to them.

In so far as the habitat of these wild animals and plants is concerned, the Indian Forest Act, 1927 and the Forest Conservation Act, 1980, merely protects the land, not the resources, water or the environment on it. The Environment Protection Act, 1986, is comprehensive in its terms of definition of 'environment'. It includes forests, rivers, streams, wildlife and flora. But in operational terms the Act is only about handling hazardous chemical substances. The Act, however, has the potentiality of being developed more comprehensively to deal with some of the major protection and conservation issues.

After 1992, India is also a signatory to the international Convention on Biological Diversity, an outcome of the Rio de Janeiro meeting of UNCED. This Convention puts India under various obligations to conserve its biodiversity in-situ and ex-situ, and create authorities for their protection. This Convention has its basis in the right to life of living things. Although the Convention binds the Central government and not the state government directly, however, being a signatory to the Convention has direct implications for the country's national forest policy, which is applicable to the states too.

This briefly outlines the legal framework which encompasses forestry work in Madhya Pradesh, and which will have to be taken into account for all future development. Besides these laws there are a number of other guidelines (such as for compensatory afforestation for projects), notifications (such as for involving the NGOs in forestry work), issued by the Ministry of Environment and Forests, and other related laws (such as concerning rehabilitation of project affected oustees, mining and industries in forest areas or for using forest resources) which will have to be taken into account for a comprehensive forestry plan. These will be discussed in the context of the problems and issues identified in the next section.

Major Issues And Problems

1. The National Forest Policy and Forestry in Madhya Pradesh

The National Forest Policy, 1988 is not legally enforceable. However, it is supposed to form the basis of future legislation on forestry. The Policy itself states that appropriate laws must be formulated to put this policy into action. Within the legal framework, therefore, it will be important to consider the nature and implications of this Policy.

At present the Policy is merely a guideline to what is desirable. Even this expression of what is desirable cannot be translated into action because what governs work at the ground level is the network of existing laws, they take primacy over all policies and guidelines. The main forest law, the Indian

Forest Act, has not been changed since 1927. Even the earlier National Forest Policy, of 1952, did not provide any impetus to change the forest laws. No major law reform has taken place so far on account of the 1988 Policy either. The use of the forest resources, therefore, continue to be governed by the 1927 Act and the forest policy embodied therein. Law reform, in accordance with the new Policy is, hence, a matter of top priority. Moreover, both the policy and the laws have to be in keeping with the constitutional framework, specially the demands of Articles 14, 19(1), 21 and 39 (b) & (c). So far the forest laws have not paid any heed to the constitutional demands. In the context of Madhya Pradesh this becomes significant because it is not only the Indian Forest Act as adopted by M.P., which needs to be made consistent with the National Forest Policy, but the state has gone on to enact laws which create total monopoly over what it calls minor forest produce, such as through the M.P. Tendu Patta (Vyapar Viniyaman) Adhiniyam, 1964, and the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969. These laws have serious implications for Articles 14, 21 and 39 (b), (c), of the Constitution, and their validity can be challenged in court. State monopoly over forest resources is a legally problematic issue, given the people's customary rights over the resources and their right to life and livelihood. It is a different matter that those who have such rights presently do not have access to the legal system or sufficient knowledge about their rights or legal processes.

Anyway, there are further practical requirements for the successful operation of a Policy, even if it be consistent with the Constitution. It is important to realise that a resource use policy, such as the Forest Policy, cannot work independently of the natural resources use policy in general, namely, the land-use, water and industrial resource-use policies. If these policies are inconsistent with each other, or if they lay down totally different plans for action, the forest policy will continue to remain ineffective.

The land use and resource use policies of Madhya Pradesh do not at all match the National Forest Policy, 1988. The laws

concerning agricultural land, industries, and forests, were enacted with totally different policy objectives, which are not only mutually contradictory or indifferent to each other, but also different from the National Forest Policy (both of 1952 and 1988). For example, whereas the Forest Policy talks of conservation of resources and protection of tribal rights, the Industrial Policy encourages industries to use the forest resources and set up factories in 'backward' (sic) areas, i.e., near forest areas. It also encourages mining of ores as a matter of greater priority than preservation of the ecology. The Water Policy, on the other hand, encourages building of hydel and irrigation schemes which, by and large, involve destruction of dense forests (through submergence, clearance, etc.)

In such a situation there are two alternatives. First, that of making the forest, water, land and industrial policies consistent with each other and with the Constitutional requirements. The laws concerning these matters will also have to be consequently made consistent. If these policies and laws are not to be made (or cannot be made) consistent with each other for various reasons, then the second alternative is to have a sufficiently strong political will to enforce one policy against the other.

As matters presently stand, it is the industrial policy and not the forest policy which seem to get the upper hand. This would not be a tragedy if the industrial policy was based on a long term economic plan which looked for a sustained yield forest resource use and a self-sustaining resource base. The existing industrial policy simply assumes the use and availability of resources, leaving the task of providing the resources (in whatever way) to someone else (namely the Forest Department). A self-sustaining resource base would have to be not only resource-wise self-sustained but also financially self-sustained. In the present system the industrial policy seems to assume an infinite availability of external funds to regenerate the resources. Consequently, in the last two decades, India has been continuously borrowing funds from external agencies, for regeneration of forest resources. Such an industrial policy can lead to only greater and greater

indebtedness. For the purposes of social forestry alone India has already borrowed more than Rs.40000 crores. Unless regeneration, harvesting and industrial supply are colaterally matched in a rational work plan, the financial inputs for afforestation will fail to have any bearing on the industrial supply or demand of resources. The operative methods under the present Forest Act does not necessitate drafting and execution of work plans which have any rational connection with a financially or resource-wise self-sustained forestry system.

This major lacuna in the forestry programme in India can be corrected by at least, initially, addressing the issues in the National Forest Policy directly, before the relevant laws are amended. There are two approaches to deal with the issue. The first relates to the state and feudal revenue system under the Constitution; and the second concerns the work plans of the Forest Departments under the state laws.

In relation to the first approach, one needs to know that in the present fiscal system, the revenue generated from forest resources goes directly to the state exchequer and becomes part of the general state funds. The funds provided to the Forest Department for afforestation purposes from the state or central revenues has no connection with the generation of revenues from forest resources in the state. Such a legal arrangement was all right in a period in which there were plenty of forest resources and hence the money earned from such resources could be put into the general kitty for other development purposes. But in a situation in which the development of the forest resources is itself at stake, and in which the resources have been drastically depleted, this arrangement is absurd. Even a common sense economic calculation would suggest that to have a self-sustaining resource base the funds put into regeneration must at least ensure that as many trees have grown back as harvested, and that sufficient funds are provided for the purpose. One way to ensure that this equilibrium is maintained is by making it explicit in the National Forest Policy that a certain percentage of revenue generated out of forest resources (the percentage required to

grow back as many trees as harvested) will necessarily have to be ploughed back into afforestation work by each state. The state of Karnataka has already taken a step in this direction. Under the Karnataka Forest Act, 1963, (sections 98A, 98B) the Forest Department levies a 'Forest Development Tax' on sale of resources to industries. This tax, at the rate of 8 per cent on the sale, is credited to the Consolidated Fund of the state and transferred to the 'Forest Development Fund'. This tax covers up to 10 per cent of the total cost required for afforestation. Evidently, the development fund will have to be increased to meet the total requirements for forestry. A similar strategy could be adopted in Madhya Pradesh. Since forest is on the Concurrent List of the Constitution the states are free to arrange their own revenue and taxation laws for generating the forest development fund.

The second method to make forestry a self-sustaining system is to make it necessary within the state forest law that each forestry work plan must include the cost of reforestation, such that the total budget of any commercial project or scheme within the work plan takes into account not only the cost of protection and harvesting but also of compensatory afforestation. Simultaneous compensatory afforestation will have to be made mandatory for every industrial harvesting. This is not the practice within the work plans of the Forest Department at present.

The lack of a general practice of compulsory compensatory afforestation (of the same species, of an equivalent value) has not only reduced the industrial resource base, it has drastically depleted the availability of fuel, fodder, food and timber for the rural and tribal masses who have been traditionally dependent on the forest resources to satisfy these basic needs. The industries have been supplied the raw forest resources at the cost of denying these resources to the rural and tribal people and consequently impoverishing them. Such an inequitable forestry practice raises many questions concerning Articles 14, 21, 91(I) and 39(b) & (c) of the Constitution. Any forest policy and practice will necessarily have to be guided by these constitutional provisions. If forestry is to now serve the needs

of the rural and tribal people as well as those of the industries it must be realised that compensatory afforestation is a matter of concern not only when major dams are to be made or other projects cleared, but one of forestry practice in general in every case. The National Forest Policy and the forest laws must, evidently, embody the principle explicitly, and not leave it to be merely a matter of guidelines for specific environmentally sensitive projects, as is the case presently.

This outline of the major problems and issues relating to the National Forest Policy and the legal and constitutional framework within which it must operate, can be illustrated more explicitly if we consider it in the concrete context of the industrial policy of the state, and notice the contrast.

2. Industrial Policy and Commercial Forestry

Here we need to consider the industrial policy only in relation to the use of forest resources, that is, only that industrial sector which is forest based. In specific, if we look at the laws concerning industries, the following issues are relevant:

The following types of incentives are given to various industries who use forest based resources listed under the First Schedule of the Industries (Regulation and Development) Act, 1951, along with the other Boards and Agencies :

- a) Exemptions in sales tax liabilities (under the Central Sales Tax Act, 1956);
- b) Exemptions in purchase tax (under the Sales Tax Act, 1959);
- c) Special capital incentives (loans and grants) for new units in backward areas (i.e. which are mostly forest areas or close to forests with good tree coverage);
- d) Octroi incentives (new or expanding units entitled to refund of octroi tax paid to local authorities);
- e) Exemption from electricity duty and power supplied at subsidised rates (refund of money spent on electricity in terms of grants, for up to 7 years);

- f) Contribution towards feasibility studies for implementing forest resource based projects (up to 25 per cent of the cost).

It is to be noted that these incentives are also available to small scale industries, cooperatives, handicraft boards. However, the conditions required to avail of these incentives are such that it is only the larger industries, or capitalists, who can make use of them (conditions such as having a certain amount of basic capital, having industrial licenses, certificates and clearances from the government, being in business for a certain number of years, etc.)

It is evident that through these laws and rules the government's forest resource use policy is to make such resources available at very low costs to the industries and that it is more eager to promote forest based industries than conservation of the resources as desired by the National Forest Policy. This is also borne out by the fact that the government has made legal contracts with a number of industries to supply them raw materials from natural forests at subsidised prices. Many of these contracts are up to the next century. Evidently, no conservation plans can be enforced in these natural forests so long as the contracts remain or if the resources are to be sold at subsidised rates. Even if there is regeneration or afforestation these industries will have the prior legal claim over the resources, unless the central or the state government repeals the contracts through a legislation. The commitments made to the industries need to be contrasted to those made to the people through nistar rights and other concessions.

As per the information supplied by the Government of Madhya Pradesh, the commitments made to the industries, in 1991, were as follows (from the whole of M.P. State) to supply forest resources at a subsidised rate :

6.8 per cent of teak and 1.66 per cent of other wood.

44.8 per cent of teak waste wood.

41.80 per cent of khair trees.

10.27 per cent of saja bark.

88.50 per cent of bamboo.

68.50 per cent of sal seeds.

(Source : M.P. Intergrated Forestry Sector Project Preparatory Report, M.P. Forest Department, September, 1991, pg. 27).

The industrial policy and the laws need to be obviously reconsidered in light of the National Forest Policy. The province and nature of the Forest Conservation Act also need to be seriously reconsidered - whether it needs to be bothered about the conservation of forest lands alone or also about the resources on these lands. It would be obvious that the resources that have been most committed, namely bamboo and sal seeds, are precisely those most required by the under privileged people of the state.

The M.P. Government has ordered stopping of felling in 16 out of the 45 districts of the state. The resources committed to the industries, noted above, are evidently from better endowed regions of the state. Evidently a major amendment to the Forest Conservation Act is recommended so that the law regulates the use of resources too and not merely the land, otherwise the aims of the National Forest Policy cannot be achieved (coverage of 1/3 land area by forest.)

If industrial growth is to be self-supporting and sustained it is necessary to abolish all subsidies and incentives. Getting raw material at lower rates from natural forests is a major loss to the over all national economy, although it may benefit the industry for a short while (till the natural resources last, which is estimated to be about 20 years at the most). From the long term economic perspective it will be better if the wastelands are commercially developed to provide a perpetual resource base for the industries. These wastelands are not likely to be developed either by the forest department (or corporation) or the industries so long as the natural forest resources can be cheaply provided from the standing forests. As discussed earlier, the complete work plan methodology for forestry needs to be changed if a sustained resource base for the industries is to be available. Compensatory afforestation needs to be made compulsory and the cost of regeneration needs to be included

in the work plans for harvesting. This can be achieved by amending the Indian Forest Act, 1927. Keeping in mind that the National Forest Policy also demands 1/3 of the land area of the state to be forested, compensatory afforestation becomes all the more necessary.

The resource demand on the forests are also through people's customary rights, i.e. nistar rights, some of which goes to serve the industrial purposes too. There is need, therefore, to consider this demand on the forest resources, through nistar rights in some detail.

3. Nistar Rights

The former kings of Central India and Berar recognized some of the traditional rights over forest resources, of the forest dwellers and those living close to the forests, in their record of rights called "wazibul Urj". The giving of such rights did not pose a serious ecological problem in the economy of plenty. But after Independence, once the Government decided to abolish zamindari and take over all private forests, there was large scale exploitation of the forests before the land was handed over to the state. This partly moved the economy of plenty to an economy of scarcity. The continued exploitation of the forests by the state agencies further complicated the issues concerning the giving of rights to the people. However, since at the time of Independence the concern with poverty was paramount, in their settlement of rights under the Forest Act, (for converting the un-titled forest areas into reserved or protected forests under the law) the state was liberal in accepting and recognizing the rights under "wajibul Urj". The rights given to each village include rights to timber poles, bamboo, fuel wood, grasses, including grazing rights.

At present although only Protected Forests are assigned for nistar purposes to all the villagers, the produce from Reserved Forests is also given. Under the present practice nistar is classified as below, this includes material being transported to far away depots to provide the resources to all the villages of the state.

- a) Free Nistar : for minor forest produce.
- b) Concessional Nistar : For timber poles, on 50 per cent of the royalty rates, as well as for fuelwood and bamboo (250 bamboo per family at about 1/20th of the market rate.
- c) Occupational Nistar : 1500 bamboo per family at 1/10th of the market rate; 1000 to each Pan Bareja family at 25 per cent of the market rate; and 5 M.T. of bamboo to manufacturers of beedi frame at 50 per cent of market rate.
- d) Commercial Nistar : of bamboo, timber, at 80 percent of the royalty rate of villagers not covered under concessional Nistar.
- e) Consumer Nistar : of timber up to 0.5 Cum for commercial fuel wood depots. At present there are 2496 Nistar and 725 commercial depots.

These figures would make it seem that there is a huge intake of resources by the villagers. To get a proper picture of the use of the forest resources, however, these figures would have to be put in the context of the total supply of forest resources by the Forest Department to industries and urban areas inside and outside the state. That is, actual local consumption would have to be contrasted with the direct supply to industries and cities by the Department and indirect supply to them by the villagers (from their Nistar rights). Only when these figures are studied in the holistic situation can one figure out whether the local demand and supply outweighs the demand and supply situation of non-village dwellers. In the absence of this it would be difficult to say whether the rights of the villagers should be increased or decreased. One should keep in mind that Articles 39 (b) and (c) of the Indian Constitution demand that the material resources of the community must be used for common good, that is equitably shared. It is doubtful whether under the current forestry and industrial practices this sharing is occurring in an equitable manner.

A case can be made, however, against nistar being given to all villagers, whether or not they live in or close to the forests,

or are dependent upon them for their livelihood. This is a matter of legal policy and not strict law. The Indian Forest Act, 1927, does not oblige the Forest Department to recognise the rights of all villagers merely because they dwell in a village. The "wajibul Urj", as noted, were decided when the "states" were limited to central India, and hence the claim over the resources were not available to all Indians. In a different legal situation, it would be more rational to limit nistar rights to people either living in the forests or those whose life and livelihood are dependent on such resources. This is also the demand of the ILO Convention 107. For this purpose the Scheduled Castes and Tribes, under the Vth Schedule of the Indian Constitution could be identified, and the rights restricted to them. However, this as noted, is a matter of state policy, and hence requires political considerations. It must be kept in mind that various government committees concerned with nistar issue have come out in favour of restricted rights. One may note the recommendations of the Shrivastava Committee of 1959 on this matter. (Shri S.S. Shrivastava, M.P. Forest Nistar Policy Committee, Rewa, 26th January, 1959).

Given that the demands on forest resources is going to progressively increase, it would be necessary to consider other modes of production of the forest resources, such as from private lands, so that some of the resources for the villages could be met from village lands directly, both common and agricultural lands.

Evidently, farm forestry need not be limited to individual farmers alone, it can be done also by groups, such as societies, cooperatives and village panchayats. However, the possibility of successful private forestry depends a great deal on the general land use policy of the state and the legal framework that governs such private lands and the resources grown on them. Private forestry for industrial or other purposes will, therefore, require a consideration of land-use policy and the legal framework for private lands in general.

4. Land Ceiling Policy and Wasteland Development

There are a number of laws which directly or indirectly determine the land use practice in Madhya Pradesh. The land use policy (the one in actual practice) is, therefore, the one that these laws prescribe and not what any other official land use policy may say, including the National Forest Policy (or government notifications which say that cooperatives, non-government organizations and other private agencies must be involved in the afforestation and use of land). An important law which determines land use and what sort of individual or organization can actually use it is the M.P. Ceiling on Agricultural Holding Act, 1960, and its various amendments upto 1984. The land use policy and practice must be analysed within the context of these land ceiling laws, since at the ground level they determine the type of forestry that is possible outside the forest lands and consequently the use of such land.

The Ceiling Act limits private ownership to about 10 acres of agricultural land for a family. There are relaxations for farmer cooperatives and joint farmers groups, but these are for agricultural purposes only. Richer landlords and industrial companies carry on forestry work on fertile agricultural land through the various loop holes in the law. An economically viable forestry work evidently requires much larger pieces of consolidated land than is available under the ceiling laws.

Since forest land is controlled by the forest department, and since the department, in any case, is willing to supply the resources from such lands on a subsidy, the industries direct interest is in exploiting the fertile agricultural lands for generation of raw material, and not wastelands. Economic costs and productivity clearly make it more practicable for the industries to go in for the fertile agricultural land than wastelands, so long as this is possible under the laws (through the loop-holes). Given this market and legal logic, the natural consequence will be that over the years the area of wastelands (denuded forest lands) will progressively increase and more and more of the fertile agricultural land will be converted to forestry purposes.

This is already being seen in many states, such as Haryana and Gujarat. Also, for absent landlords, plantation of trees becomes a method of protecting their land from encroachment and the hassle of agricultural laws (such as the rights of the tiller if he tills it for more than a certain number of years). Such landlords are not really interested in good quality productive commercial forestry, even a minimum return will do, so long as their land remains protected. A great number of 'farm forests' in Madhya Pradesh (including in Haryana, Gujarat, U.P., and other states) seem to be of this type, which is all right from the point of view of the landlords but not good from the point of view of economic productivity.

Now a more clear headed thinking on land use is required here as to how much of the fertile (irrigated) land does the state want to reserve for agricultural purposes and how much can it put in for forestry. This evidently depends upon the state's food and agricultural policy besides the forest policy. It is of little use having land ceiling on agricultural land without putting it into this total context.

The basic question is : has the state used more of the productive (irrigated) land for food production than is required in its food policy? If that is so the state must determine the extent to which land is required for agricultural purposes, and remove the ceiling on the rest of the agricultural land, making it possible for the industries, cooperatives and non-government agencies to commercially exploit such lands for forestry purposes. This is not to suggest any resurrection of landlordism (zamindari), the ceiling law should make it clear that it will not apply only in cases of group ownership, such as of companies, cooperatives, NGOs and panchayats, and that too only for the purposes of forestry. The present notifications allow for group participation but not ownership.

If, on the contrary, it is perceived that the fertile agricultural land is barely sufficient for food production for the state, it is necessary to find legal means to eliminate forestry on agricultural lands. In such a situation it is not only necessary to enforce the existing ceiling law more stringently, but also

necessary to pass another law totally banning forestry on agricultural land. Such a step is urgently required even for the development of wastelands (denuded revenue or forest lands), for, as noted, so long as it is economically cheaper and more profitable to do forestry on agricultural land why should any industry turn to the wastelands; and also so long as the forest department is allowed to give the resources from the natural forests to the industries why should it really bother about the development of waste lands ! If the state perceives that the protection of both the natural forests and agricultural land is of paramount importance, and that the wasteland need to be developed, then this double pronged legal strategy is the only way out, namely, ban the supply of raw materials from natural forests and ban forestry work on agricultural land. This will force the development of wastelands, which would evidently be less profitable immediately, but more profitable and sustainable in the long run for industrial development. After taking these two steps the wastelands (revenue and forest lands) can be allotted to the industries, cooperatives, panchayats, NGOs and other agencies, with strict provisions that the land can be used for forestry purposes only (the provisions of the Forest Conservation Act will not be violated). Allotment of the wastelands without taking the above two steps is unlikely to lead to the regeneration of wasteland. Evidently, detailed studies of the impact of the land laws are required, in terms of food, industrial and forestry requirements before more reasonable decisions can be made.

One of the major reasons why the Forest Corporations have not been successful is precisely due to these two factors - the continued supply of raw material from the natural forest resources, and the industries attempts to get the remaining resources from private lands. There is very little economic or legal necessity for the Corporations to develop the wastelands for commercial purpose - which is the essential task given to them. Legally the Corporations are competent to enter into joint financial ventures with the industries (on a joint management and joint capital investment basis). But in the present conditions it makes little economic sense for the

industries to enter into such joint ventures with the Corporations. The formation of the Corporations is in itself not a wrong or bad legal strategy, it is a method of retaining the ownership and control over forest lands, as public (government) lands, and still at the same time allowing the industries an access to such lands. But the economic viability of such a strategy is related to the corresponding availability of the resources from forest and private lands, that is, on the demand and supply situation. So long as the demands continued to be met from these other sources the function of the Corporations will continue to be marginal.

Which of the above two legal strategies is more appropriate for the state - whether banning forestry on agricultural land or liberalizing forestry on such lands, is a decision which can be taken only through mutual discussions between the Ministry of Forest, the Ministry of Agriculture and the Revenue Department, depending upon the amount of land required for food production, etc. Agricultural land, being a state subject, can be handled by the Department of Revenue and the Department of Agriculture alone, whereas for forest lands both the state Ministry of Forests and the Central Ministry of Environment are competent to take the decisions.

5. Joint Management and Social Forestry

The major agencies, besides the Forest Department, who can engage themselves in forestry work are: NGOs, cooperatives, panchayats, municipalities, notified groups (such as Village Development Committees, Mahila Mandals, Yuvak Mandals, etc.) and educational and religious institutions. The institutions, evidently, can be only marginally involved since their main tasks are of a different nature.

The June 1990, Notification of the Central Ministry of Environment and Forests has directed all state forest departments to involve NGOs, cooperatives and other private agencies in forestry work. Based on this notification the Government of Madhya Pradesh has come out with its own notification for joint forestry management, on similar lines

(M.P. Order No: 16/4/10/2/91 of 10/12/1991). The Notification sets up Village Forest Committees. It provides usufruct rights to such agencies but not land allotments. In concrete terms, it gives 20 per cent of the net income derived from forests that the Committees protect, alongwith 30 per cent income from felling and nationalised MFP in addition to the Committee's income from thinning, clearing etc. The notification also lays down the procedure for setting up the Committees. This is indeed a progressive step, but hardly sufficient in the present circumstances. The problem is that most of the non-forest lands are already vested with the panchayats, municipalities and other statutory bodies. Hence the only type of land available are the wastelands with the Forest Department, which come under the purview of the Forest Conservation Act. Vide the June Notification, it can be presumed that the permission has been given by the Centre to involve the NGOs, cooperatives and other private agencies, to work on the forest land. The Forest Department needs to encourage this where possible.

However, Village Development Committees, Mahila Mandals and other such agencies formed by various government departments through orders, are purely ad hoc bodies who do not have a legal standing, they have only an administrative recognition for the project defined and from the concerned government department, and are therefore, legally administrative adjuncts of the Forest Department. Being non-forest statutory bodies, such agencies have no legal power to bargain with the department for terms and conditions, nor are they eligible for credits or loans from banks or other funding agencies. Moreover, when it comes to actual work such agencies will have to work on lands which are, by and large, allotted to panchayats, municipalities and other statutory bodies. Although the panchayat can pass a resolution to allow such ad hoc committees to work on its land the final power to use the resources or define the rules of benefit sharing remains with the panchayat. There is a great likelihood of conflict between such agencies and the panchayats, as has been noticed in other states. The alternative would be to make these

administrative bodies into statutory bodies, by passing a law. But then why must one duplicate village level governance? Under the Constitution of India, the States are directed to support and promote local governments (called panchayats) and the Panchayat Acts have provided some of the necessary framework for such governance. There must be good ground to go contrary to the Constitutional mandate. In the present circumstances there seem to be no legal grounds for creating a new legal body in whom the local level resources, including forest lands can be vested. In fact setting up of such bodies would amount to subverting not only the possibility of local management systems, but also the Constitution. The Panchayat Act already provides the powers to the panchayats to set up special sub-Committees or Local Committees for specific purposes, such as forestry.

In the final analysis then it is only the elected, statutory and constitutionally warranted bodies, namely the panchayats and municipalities, which are the legally viable agencies available for forestry work. So long as these democratically elected bodies continue to exist they will rightfully continue to make demands both on land and its resources. Therefore it will be wiser for the Forest Department to work with these agencies and strengthen them, rather than set up a multiple of new agencies who have no statutory standing. In terms of numbers too, the panchayats and municipalities are ubiquitous. There is no question of the non-availability of such agencies. Once the agency with which the Forest Department has to work for the purposes of social forestry has been settled, there are a number of other minor issues that need to be attended to for ensuring success.

First, the Schedule of trees under the Tree Act or the India Forest Act needs to be rationalised so that people have a much greater freedom in selection of species. The rules need to be enforced only in the vicinity of genuine reserved or protected forests and not on all private lands.

Second, the transit of timber rules need to be similarly rationalised. Again, they need to apply only in areas where

there is a genuine possibility of theft of government timber, that is, close to government forest areas. The rule need not apply in all places.

Third, the state government must ensure that for forestry work the people get at least wages in accordance with the Minimum Wages Act. The work under this Act can be classified as 'industrial labour' so that people are attracted to undertake forestry labour.

It has been argued that the best legal strategy will be to empower and engage the panchayats in all rural areas to carry out forestry work so that the villages become self-sustaining. Since this is a central idea for social forestry it needs to be explored in greater detail. The viability and legal requirements of local institutions will be explained in what follows. Attention needs to be paid to other non-state legal bodies, such as cooperatives and registered societies, and the Act under which they function. Here the remarks are limited to the functioning of the statutory body, namely panchayats, for forestry purposes.

6. Local Institutions

To generate the forests which will serve the people's fuel, housing and other timber needs, it is necessary not only to change the tree felling and species regulations laws, as mentioned earlier, but also to amend the basic statute which regulates the elected people's organization at the grassroot level, namely the Panchayat Acts. Presently, by and large, people's fuel and timber needs are being satisfied from forests with the forest departments. A major cause of denudation is the unregulated usurpation of the resources by the people from the forest areas. The need to create village forests is, therefore, immense if the remaining natural forests are to be protected. Under various social forestry programmes attempts have been made to create 'community woodlots' or 'village forests' on panchayat or revenue lands. Such forests have been generated by the forest department and often simply handed over to the panchayat, without the requisite legal safeguards for the

management, protection and sustenance of such plantations. Numerous examples of social forestry, such as in Tamil Nadu, has shown that such handing over does not at all guarantee the future continued existence of such forests. A permanent solution can come about only if amendments are made to the Panchayat Act itself, and not merely through government orders or notices. The Panchayat Acts must necessarily incorporate the following types of changes. The Act under consideration here is the M.P. Panchayat Act, 1981 (Amended), the M.P. Panchayat (Management of Government Lands) Rules, 1964, along with other rules made under these Acts, which are applicable to the whole of Madhya Pradesh.

The following types of amendments to the Panchayat Act are necessary :

- a) The Act must provide that the land vested in the panchayats (or allotted to it by the revenue or forest department) cannot be used for any non-forestry purposes, in the same way as the Forest Conservation Act restricts use of forestry land (Section 57 of the M.P. Panchayat Act vests common lands in the Panchayats). Some of the lands earlier vested in the panchayats, which became encroached or were being cultivated for private purposes, were regularised by the state government. The fact that lands vested in the panchayats get encroached does not by itself become a good reason to take the land away from them. Land encroachment also occurs on state revenue, forest and other public land. By this logic such lands would have to be acquired from the state too and nationalised. What one has to find is the reason due to which the panchayat lands get encroached and then try to remove these difficulties. If one looks at the functioning of the panchayats the difficulties are not so difficult to discover. So far the panchayats have simply not been provided enough funds even to hire a guard who can protect the panchayat lands and the resources on them. The financial and managerial infrastructure required to utilise the common lands has just not been available

with the panchayats. Simply vesting land or resources in the panchayats and putting duties on them to protect these resources, as the M.P. Panchayat Act does, will not work. Duties cannot be performed without the correlated powers and rights. Like other Panchayat Acts, the M.P. Panchayat Act provides for 'village funds' from various sources. Development funds can be provided to the panchayats (as village funds) by the state government, with clear instructions and restrictions, that such funds are meant for the purposes of village forests only, for works such as salary of forest guards, fencing, seedlings, and other protection measures. Funds can be directly allotted to the panchayats by the state government under section 8 of the Central Provinces and Berar Municipalities Act, 1922.

- b) The Panchayat Act must bar clear felling of village forests. It must allow harvesting on a rotational basis, in a scientific manner and in consultation with the forest departments.
- c) The Act must necessitate that 20 per cent (or more) of the revenue earned from harvesting of the village forests must go back into the regeneration of the forest.
- d) The Act must lay down clear rules for benefit sharing and use of the forest resources, as well as the duties involved in planting and protection.
- e) The Act must allow the panchayats to retain the funds generated from forestry work and include it in the village development fund. At present revenue arising from common village resources go to the Zilla Parishads and then finally to the state government. No group of people can ever be interested in simply development of a resource when they know that they will have no control over the benefits arising from it.
- f) The Panchayat Act empowers the panchayats to form committees. The state must instruct the panchayats to set up committees for protection of village forests and

for ensuring benefit sharing. Funds must be provided to the panchayats to set up and operationalise such committees.

In brief, if forests are to exist in villages or close to villages, the Panchayat Act must embody some of the important features of the Forest Act and the Forest Conservation Act. Necessary amendments to the Panchayat Act in this respect is a matter of urgent necessity. After these amendments are made land allotment to village panchayats needs to be done, wherever possible, to maximise the number of village forests and lessen the burden of the Forest Departments. Both revenue and forest lands could be allotted to the panchayats for creating and sustaining village forests. It must be remembered that a great deal of land presently with the Forest and Revenue Departments are precisely those which were once with the villages as forest areas and were acquired by the state under the Forest Act or the Land Acquisition Act.

7. Conservation of Wildlife

Protection and conservation of natural forests and wildlife is tied up in a major way with resource use. The major reason why the natural forests have been depleted in this century is its uninhibited exploitation for industrial purposes. Unless the wastelands, common lands and private lands are now developed to provide the industrial and domestic needs of the people there is little hope for conservation. One way in which such lands can be developed early and efficiently is by creating a legal need to do so by totally stopping the supply of resources from the natural forests. The Central government's guidelines, under the Forest Conservation Act, to stop clear felling forests, is a step in this direction. However, as noted earlier, there is a need to amend the Forest Conservation Act itself to regulate the resources and not merely the land.

The operative Wildlife (Protection) Act, 1972, protects the life of certain species of animals and birds. It does not, however, deal with the in-situ or ex-situ protection of flora and bio-diversity in general, nor does it concern itself with the

habitats of such flora and fauna, the protection of which is essential if wildlife is to be protected. A comprehensive and practical Wildlife Act needs to operate with a larger concept of protection which must include the flora as well as the habitat. The Act needs to be accordingly re-formulated. To enforce the Act on a rational basis all the sensitive areas of significant biodiversity need to be identified. The survey of forest areas under the Five Year Plan programmes take note of tree species alone. There is a need to have a more comprehensive survey which must include wildlife. On the basis of this survey all remaining areas of significant bio-diversity need to be declared as national parks or sanctuaries.

The fact that protection of forest areas involves protection of total habitats is not understood, and hence not included, in the existing forest laws. The Indian Forest Act, 1927, needs to be amended to include watersheds and catchment areas and totally protect them, if water resources are to be available for the growth of forests. Mining in forest areas, similarly, needs to be strictly regulated under the Forest Act. At present it concerns itself merely with the giving of licences. The guidelines under the Forest Conservation Act demand compensatory afforestation, but as yet it does not include provisions for proper soil conservation measures. Instead of monitoring compensatory afforestation from the Centre, it would be better to amend the Indian Forest Act so that soil conservation and afforestation can be made compulsory in all cases of mining and monitored by the state government. The Environment Protection Act, 1986, deals mainly with the handling of hazardous substances, although the definition of 'environment' under the Act is comprehensive. With these existing protection laws, hence, it would be impossible to abide by the demands of the international Convention on Biological Diversity, 1992, to which India is a signatory. An issue closely related to that of parks and sanctuaries is that of village settlements inside reserved or protected forests. This issue, therefore, requires some detailed consideration.

8. Village Forests

A major issue in the protection and conservation of natural forests and wildlife is that of villages or settlements inside the forests. In Madhya Pradesh there are 1,361 Forest Villages (as on 1.1.79) with a population of 2.8 lacs. The normal development work under the Tribal Sub-Plan and other programmes cannot take place in these villages without confronting the provisions of the Forest Conservation Act. Where such villages fall within areas which are national parks or sanctuaries, or where protection and conservation measures are essential, development works, such as road construction, are evidently counter-productive. It is often made out that in such areas a conflict, where it does exist, is external. It is usually the local political process which demands such development works, not the tribals or the forest dwellers. The funds provided for such work too, by and large, remain with these external agents. What the tribals and forest dwellers have been basically demanding since long is the preservation of forests, it is the forest resources that they need. In the interest of such people and in the interest of the bio-genetic diversity there is an urgent need to cease all development work in the sensitive protected areas and enforce the law strictly for conservation. The areas need to be protected along with the tribals and forest dwellers so as to recognize the fundamental right to reside, of the tribals, which is guaranteed by the Constitution. The argument that denial of 'development' work in the protected areas is violative of article 14 of the Constitution (equality before the law), holds no grounds in this case, because, first, the preservation of these areas is to be done in the interest of the forest dwellers and in national interest; and second, in the long run, development of these areas consists of their preservation and not destruction. It is likely that the forest dwellers may want to lead a modern urban life-style in the coming future. This does not mean that this needs to be provided in their very habitat. Millions of people have migrated in India from rural areas to urban areas for better opportunities, and have also migrated outside India for the same reason. The forest dwellers can do the same, but, of

course, the option must be theirs. Law cannot provide any grounds for evicting or ousting the tribals from the forests. It can, however, provide the conditions for their rehabilitation, as the ILO Convention 107 does, to which India is a party. The M.P. rehabilitation law, namely M.P.(Project Affected) People's Rehabilitation Act, provides for the conditions only when large projects, such as for dams, are undertaken (leaving aside for the moment whether the provisions under this Act are adequate). It does not provide for rehabilitation from national parks or sanctuaries.

If the forests are preserved the forest dwellers have a genuine choice, to remain within or migrate to other areas, but if the forests are to be destroyed the options are foreclosed. For the sake of leaving the options open for the forest dwellers and for the future generations, protection of forests alongwith the forest dwellers is a matter of utmost significance.

Summary of Recommendations

The foregoing discussions consider the basic issues along with various alternatives which are recommended to deal with the problems. This summary is intended to succinctly highlight the most important recommendations from amongst these alternatives suggested.

Forestry practices in Madhya Pradesh are not in keeping with the National Forest Policy of 1988. This is mainly because the policy in practice, embodied in the Indian Forest Act of 1927 and operative in M.P. is at gross variance with the National Policy. There is need, therefore, to review and amend this Forest Act. The amendment needs to be done in a wholistic way, taking into account the policy and provisions of the Industrial Development Act, and those concerning other natural resources like land and water, such as the M.P. Irrigation Act, 1931, as well as tax laws which provide incentives to exploit the forest resources. Laws concerning forest produce, such as the M.P. Tendu Patta Act, 1964, which create state monopoly over the resources, also need to be reconsidered in light of the National Forest Policy and the Constitutional demands.

Chapter Five

LEGAL ASPECTS OF FORESTRY IN WEST BENGAL*

Introduction

The central and the state governments are seriously concerned with the depleting forest resources in India. Serious attempts have been made in the last two decades to regenerate the forest resources to meet the industrial and people's needs. New wings of the Forest Department, such as the Forest Corporation and Social Forestry Wing, have been set up to take up the enormous task. Despite these efforts, however, the success has not been commensurate with the funds spent or the work done. This report looks at the forestry situation in a comprehensive way to seek the main reasons for the slow progress in forestry and then to suggest the alternatives that must be sought if forestry is to succeed on the scale desirable.

Forestry, evidently, involves various factors. One of the major factor is the legal framework, for it is the law which sets the stage for what is permitted, prohibited and possible. The framework has to be of a kind which will allow the achievement of the goals. In the Indian context this becomes extremely significant because the inherited legal framework is of a period when the nature of forestry work was very different from what is desired now. The aim of this work is to scrutinise the legal framework comprehensively with reference to each sector of forestry work. Although the analysis will be of a general nature, that is, one which is relevant to the legal framework in most states in India, the specific legal framework for review here will be that of West Bengal, since from the point of view of an integrated forestry plan this state poses many critical problems which are faced in other states too.

The scheme of presentation in this Report is as follows : Section-I is the Introduction. Section - II presents the existing

* With reference to the National Tropical Forestry Plan

legal framework that relates to or governs forestry work in West Bengal at present. Before one can critically examine the legal framework it will be important to be aware of the provisions and their background. Section-III identifies the major issues and problems with the existing framework, with reference to the various sectors of forestry work. It also discusses the legal alternatives and suggests the necessary steps that need to be taken in the light of an integrated national tropical forestry plan. The legal alternatives are discussed along with each issue and forest sector.

The Existing Legal Framework

The complex legal framework which concerns protection, conservation, acquisition and utilisation of the forest resources, both by the people and the state, can be classified into three aspects. These three aspects of the legal framework need to be understood separately to fully analyse and amend the regulations concerning forestry. These aspects, in their totality, constitute the existing legal framework.

- a) The first aspect consists of the laws and policy which give the governments the power and the rights to utilize the natural resources, such as land, forests, minor forest produce, water and ores found in forest area. The basic question here would be: are these powers and rights correlated with appropriate duties to necessitate the execution of the desired tropical forestry plans?
- b) The second relates to the laws and policy which give the people rights over common resources, such as timber, minor forest produce and water. The basic questions here are: are these rights appropriate or rational in the context of the present ecological situation? Are they appropriate from the point of view of the basic needs of the local people? And most significantly, who should constitute the people who should be entitled to these rights?

- c) The third aspect relates to nature or natural resource itself. Here the rights of the flora and fauna, in terms of their protection, conservation and well-being, are of **utmost importance**. The crucial questions are ; are the laws (or their implementation) good enough for the protection, conservation or development of wildlife and the bio-genetic diversity? Are these rights equitable in relationship to the rights of man? Here the Wildlife Act, the Constitutional provisions, some central and state laws and International Conventions play a crucial role. Let us turn to see in specific terms the laws that constitute these three aspects, and which will have to be taken into account if the legal framework for forestry has to be appropriately developed.

1) The Powers of the State

- i) **Constitutional Powers** : The power of eminent domain to acquire private land for forestry and other public purposes is provided through Article 31-A and 298 of the Indian Constitution. The power to make laws for regulation of forests is laid down by Entry 17A, in the IIIrd List (The Concurrent List), of the Seventh Schedule of the Constitution. This means that both the central parliament and the state legislatures are competent to make laws relating to forests. However, in actual practice, in the last forty years since Independence, the states have not used this Constitutional power to make any major changes in the basic forest law which governs forestry in most states, namely the Indian Forest Act of 1927. They have carried on their work through administrative orders; and the centre has used the power only once to enact the Forest Conservation Act in 1980. It did not touch upon the forest issues in the Environment Protection Act, 1986.
- ii) **Statutory Powers**: The eminent power to acquire and utilise private land is available at the state level through the Land Acquisition Act, 1894, (section 4), and the Estate Acquisition Act, 1953. The power to declare any

land (including public and common lands) as government forest land is provided through the Indian Forest Act, 1927 (as adopted by West Bengal and amended in 1981 and 1988). The power to take over private forests or wastelands is available to the West Bengal government through the West Bengal Land Reforms Act, 1955 (and as amended in 1986), as well as the earlier West Bengal Private Forests Act, 1918. The power to regulate the transit and marketing of forest resources, even from private lands, is exercised by the state through the West Bengal Forest Produce Transit Rules, 1959 (and as amended in 1987, 1988). Wood based industries in West Bengal are regulated not only through the West Bengal Forest Act, but also through the Forest (Establishment and Regulation of Saw-Mills and other Wood Based Industries) Rules, 1982.

The Forest Conservation Act, 1980, gives the central government a power over-riding those of the states' in so far as the use of forest lands is concerned. It makes it necessary for the states to seek permission of the central government for any non-forest use of forest lands.

2) Duties of the State

It is important to note that these constitutional and statutory powers are interpreted by the governments only in terms of rights, without any correlated duties, that is, as absolute rights to use the forest land and resources in any way the government deems it proper. None of these constitutional provisions or statutes (including the Indian Forest Act, 1927) lay down any specific duty on the state to conserve the forests or use their resources equitably. Even the central Forest Conservation Act, 1980, only transfers the power of use to the central government, it does not lay down any duty on the central or state governments to conserve forests.

The Constitutional duty, that the central and state legislatures must lay down laws for the welfare of the people and (specifically) use the natural resources of the country for

the common good (that is for the good of all people, including the local inhabitants) are explicitly laid down through Article 39 (b) and (c) of the Constitution. These Articles, however, form part of what is called the Directive Principles of State Policy in the Constitution. The former legal theory, and the one that the governments still seem to like to hold on to, was that the Directive Principles are merely 'directives' and hence not enforceable in any court of law. Within the last decade, however, the Supreme Court has clearly laid down in various court judgments (such as *Minerva Mills v. UDI*) that these principles are constitutional duties of the state and therefore enforceable in courts in the same way as the fundamental rights. In the case of violation of fundamental rights the courts have to enforce specific duties on other individuals or agencies. In the case of violation of Directive Principles, however, the courts have to enforce duties on the state, namely the legislators, planners or the government departments who plan or execute projects. This is next to impossible within the present democratic structure since there is no agency which can check the state if it violates the mandate of the constitution or that of the courts. Given this situation, hardly any project planning, whether it be of specific projects or the national Five Year Plans, takes note of the constitutional mandate of the Directive Principles of State Policy of the Constitution.

Besides the constitutional framework, the only other direction available for work or project planning is the National Forest Policy, such as of 1988 or 1952 earlier. The Policy, however, has no legal binding on the state or the central governments. The work plans or contractual agreements on the use of forest resources has, therefore, had no relationship to the National Policies so far.

This outlines the legal framework from the side of the state. Briefly, the relevant constitutional and legal provisions are :

Constitution : Articles : 31-A, 298, 39 (b) & (c) and Entry of the VIIth Schedule.

Central Law :

The Forest Conservation Act, 1980.

State Laws :

The Land Acquisition Act, 1894.

The West Bengal Estate Acquisition Act, 1955 (1986).

The Indian Forest Act, 1927 (as adopted and amended by West Bengal in 1981, 1988).

The West Bengal Private Forests Act, 1948.

The West Bengal Forest Produce Transit rules, 1959.

The West Bengal Forest (Establishment and Regulation of Saw Mills and other Wood Based Industries) Rules, 1982 (and as amended in 1986, vide notification No : 3627- For./F.P./BP-11/82 Pt. I).

Besides these laws which directly relate to forestry, there are a number of other laws which are of relevance in the context. These concern mining, agriculture, land ceiling and land consolidation and formation of associations, such as the panchayats, cooperatives, companies, trusts and registered societies. The laws relating to these will be discussed in relation to the specific issues subsequently.

Let us turn now to outline the legal framework from the perspective of the people.

3) Rights of the People

i) Constitutional Rights

Three basic constitutional provisions, all of which are fundamental rights of the people, directly apply in the forestry situation :

Article 14 - Equality before the law. This necessitates that legally no individual or group of people, such as the tribals, local forest dwellers, industries and others who use the forest resources, must be treated unequally.

Article 21 - Right to life and livelihood. This mandates that the people have a right to the basic environmental resources on which their life and livelihood are dependent.

Article 19 (1) - Right to reside. This provides for a fundamental right to reside in an area in which people have domiciled for long.

ii) Statutory Rights

Any forest rights recorded in the record-or-rights under Chapter X of the Bengal Tenancy Act, 1885.

Rights of the people recorded under Chapter III of the West Bengal Private Forests Act, 1948.

Rights under the Forest Act, 1927 (1981, 1988). These rights are those settled by the Forest Settlement Officer when demarcating or classifying a forest as reserved or protected, after notifying the area under section 4 of the West Bengal Forest Act.

Rights under the Easement Act, 1984. These are the customary rights recognised under section 15-18 of the Act, which includes right to fuel, fodder, passage, including water rights and riparian rights.

Customary rights, such as nistar, dafayti and khudkatti and grazing rights, granted by earlier sovereigns and recognised by the present courts. These rights are also recognised under the Indian Forest Act and the Easement Act.

To summarise, the relevant legal provisions from the side of the rights of the people are :

Constitution :

Articles : 14, 19(1), 21.

State Laws :

The West Bengal Forest Act, 1927 (1981, 1988).

The West Bengal Private Forests Act, 1948.

The Easement Act, 1884.

The West Bengal Tenancy Act, 1885.

Customary Rights recognised by the courts.

4) Rights of Nature

The third relevant aspect of the legal framework consists of those laws which pertain to the flora and fauna directly. These are as follows :

The Wildlife Act, 1972 : Under this Act, protection is given to a number of animals and birds which are specific in

the Schedules to the Act. Since the Act prescribes a duty on the state to protect these creatures there arises a corresponding legal right that belongs to them. The Act, however, does not cover plants, trees and other bio-genetic diversities.

The West Bengal Forest Produce Transit Rules, 1959 : This Act puts a duty on the State to protect certain species, and hence generates correlated rights for various trees to be protected. The Act does not, however, protect wild plants, herbs and other medicinal plants.

In so far as the habitat of these wild animals and plants is concerned, the West Bengal Forest Act, and the Forest Conservation Act, 1980, merely protect the land, not the resources, water or the environment on it. The Environment Protection Act, 1986, is comprehensive in its terms of definition of 'environment'. It includes forests, rivers, streams, wildlife and flora. But in operational terms the Act is only about handling hazardous chemical substances. The Act, however, has the potentiality of being developed more comprehensively to deal with some of the major protection and conservation issues.

In short, the laws concerning protection and conservation that need to be taken note of are :

The Wildlife (Protection) Act, 1972

The West Bengal Forest Act, 1927 (1981, 1989)

The Forest Conservation Act, 1980.

The Environment Protection Act, 1986.

This briefly outlines the legal framework which encompasses forestry work in West Bengal, and which will have to be taken into account for all future development.

Besides these laws there are a number of other guidelines (such as for compensatory afforestation for projects), notifications (such as for involving the NGOs in forestry work), issued by the Ministry of Environment, and other related laws (such as concerning rehabilitation of project affected oustees,

mining and industries in forest areas for using forest resource) which come under the Guidelines to the Forest Conservation Act, and will have to be taken into account for a comprehensive forestry plan. These will be discussed in the context of the problems and issues identified in the next section.

MAJOR ISSUES AND PROBLEMS

1. The National Forest Policy in relation to other Resource Policies

The National Forest Policy, 1988 is not legally enforceable. However, it is supposed to form the basis of future legislation on forestry. The Policy itself states that appropriate laws must be formulated to put this policy into action. Within the legal framework, therefore, it will be important to consider the nature and implications of this Policy.

At present the Policy is merely a guideline to what is desirable. Even this expression of what is desirable cannot be translated into action because what governs work at the ground level is the network of existing laws. They take primacy over all policies and guidelines. The main forest law - the Indian Forest Act, has not been changed since 1927. Even the earlier National Forest Policy, of 1952, did not provide any impetus to change the forest laws. No major law reform has taken place so far on account of the 1988 Policy either. The use of the forest resources, therefore, continues to be governed by the 1927 Act and the forest policy embodied therein. Law reform, in accordance with the new Policy is, hence, a matter of top priority. Moreover, both the policy and the laws have to be in keeping with the constitutional framework, specially the demands of articles 14, 19(1), 21 and 39 (b) & (c). So far neither the National Forest Policy nor the forest laws have paid any heed to the constitutional demands.

There are further practical requirements for the successful operation of a Policy, even if it be consistent with the Constitution. It is important to realise that a resource use policy, such as the Forest Policy, cannot work independent of

the natural resources use policy in general, namely, the land-use, water and industrial resource-use policies. If these policies are inconsistent with each other, or if they lay down totally different plans for action, the forest policy will continue to remain ineffective.

The land use and resource use policies of West Bengal do not fully match the National Forest Policy, 1988. The laws concerning agricultural land, industries, and forest, were enacted with totally different policy objectives, which are not only mutually contradictory or indifferent to each other, but also different from the National Forest Policy (both of 1952 and 1988). For example, whereas the Forest Policy talks of conservation of resources and protection of tribal rights, the Industrial Policy encourages industries to use the forest resources and set up factories in 'backward' (sic) areas i.e. near forest areas. It also encourages mining of ores as a matter of greater priority than preservation of the ecology. The Water Policy, on the other hand, encourages building of hydel and irrigation schemes which, by and large, involve destruction of dense forests (through submergence, clearance, etc.)

In such a situation there are two alternatives. First, that of making the forest, water, land and industrial policies consistent with each other and with the Constitutional requirements. The laws concerning these matters will also have to be consequently made consistent. If these policies and laws are not to be made (or cannot be made) consistent with each other for various reasons, then the second alternative is to have a sufficiently strong political will to enforce one policy against the other, such as the forest policy against agricultural or urbanisation (settlement or encroachment) policies.

2. Self-Sustained Development and the Forest Laws

As matters stand, it is the industrial and urbanisation Policies and not the forest policy which seem to get an upper hand. This would not be a tragedy if the industrial policy was based on a long term economic plan which looked for a sustained yield forest resource use and a self-sustaining

resource base. The existing industrial policy simply assumes the use and availability of resources, leaving the task of providing the resources (in whatever way) to someone else (namely) the Forest Department. A self sustaining resource base would have to be not only resource-wise self-sustained but also financially self-sustained. In the present system, the industrial policy seems to assume an infinite availability of external funds to regenerate the resources. Consequently, in the last two decades, India has been continuously borrowing funds from external agencies, such as the World Bank and other international funding agencies for regeneration of the forest resources for industrial purposes. Such an industrial policy can lead to only greater and greater indebtedness. For the purposes of social forestry alone India has already borrowed more than Rs. 40000 crores so far. Unless regeneration, harvesting and industrial supply are colaterally matched in a rational workplan, the financial inputs for afforestation will fail to have any bearing on the industrial supply or demand of resources. The operative methods under the present Forest Act do not necessitate drafting and execution of work plans which have any rational connection with a financially or resource-wise self-sustained forestry system.

This major lacuna in the forestry programme in India can be corrected by at least, initially, addressing the issues in the National Forest Policy directly, before the relevant laws are amended. There are two approaches to deal with the issue: The first relates to the state and federal revenue system under the Constitution; and the second concerns the work plans of the Forest Departments under the state laws.

In relation to the first approach, one needs to know that in the present fiscal system, the revenue generated from forest resources goes directly to the state exchequer and becomes part of the general state funds. The funds provided to the Forest Department for afforestation purposes from the state or central revenues has no connection with the generation of revenues from forest resources in the state. Such a legal arrangement was all right in a period in which there were plenty of forest resources and hence the money earned from such resources

could be put into the general kitty for other development purposes. But in a situation in which the development of the forest resources is itself at stake, and in which the resources have been drastically depleted, this arrangement is unsound. Even a common sense economic calculation would suggest that to have a self-sustaining resource base the funds put into regeneration must at least ensure that as many trees have grown back as harvested, and that sufficient funds are provided for the purpose. One way to ensure that this equilibrium is maintained is by making it an explicit National Forest Policy that a certain percentage of revenue generated out of forest resources (the percentage required to grow back as many trees as harvested) will necessarily have to be ploughed back into afforestation work by each state. The state of Karnataka has already taken a step in this direction. Under the Karnataka Forest Act, 1963, (sections 98A, 98B) the Forest Department levies a 'Forest Development Tax' on sale of resources to industries. This tax, at the rate of 8 per cent on the sale, is credited to the Consolidated Fund of the state and transferred to the 'Forest Development Fund'. This tax covers upto 10 per cent of the total cost required for afforestation. Evidently, the development fund will have to be increased to meet the total requirements for forestry. A similar strategy could be adopted in West Bengal. Since forest is on the Concurrent List of the Constitution the states are free to arrange their own revenue and taxation laws for generating the forest development fund.

The second method to make forestry a self-sustaining system is to make it necessary within the state forest law that each forestry work plan must include the cost of reforestation, such that the total budget of any commercial project or scheme within the work plan takes into account not only the cost of protection and harvesting but also of compensatory afforestation. Simultaneous compensatory afforestation will have to be made mandatory for every industrial harvesting. This is not the practice within the work plans of the Forest Department at present.

The lack of a general practice of compulsory compensatory afforestation (of the same species, of an equivalent value) has not only reduced the industrial resource base, but has also depleted the availability of fuel, fodder, food and timber for the rural and tribal masses who have been traditionally dependent on the forest resources to satisfy these basic needs. The industries have been supplied the raw forest resources at the cost of denying these resources to the rural and tribal people and consequently impoverishing them. Such an inequitable forestry practice raises many questions concerning articles 14, 21, 19(1) and 39 (b) & (c) of the Constitution. Any forest policy and practice will necessarily have to be guided by these constitutional provisions. If forestry is to now serve the needs of the rural and tribal people as well as those of the industries it must be realised that compensatory afforestation is a matter of concern not only when major dams are to be made or other projects cleared, but one of forestry practice in general in every case. The National Forest Policy and the forest laws must, evidently, embody the principle explicitly, and not leave it to be merely a matter of guidelines for specific environmentally sensitive projects, as is the case at present.

This outlines the major problems and issues relating to the National Forest Policy and the legal and constitutional framework within which it must operate. Let us turn now to see how the industrial policy and practice related to forestry operates concretely in West Bengal and how the issues therein relate to the above discussion.

3. Industrial Policy and the Forest Laws

Here we need to consider the industrial policy only in relation to the use of forest resources, that is, only that industrial sector which is forest based. In specific, if we look at the laws concerning industries, the following issues are relevant:

- a) Issues concerning mining and industrial wastelands.
- b) Use of forest lands for commercial purposes.
- c) Commercial use of land, such as for tea gardens, and its relation to forestry.

Let us turn to look at each of these issues individually.

a) Mining and the Industrial Wastelands

Industrial wastelands have been created in the state mostly through open cast mining for coal. There are about 500 hectares of abandoned coal mines on revenue and forest lands where the top soil has been so badly eroded that any afforestation or regeneration will be a strenuous task. Despite these existing wastelands the industrial and energy policies of the governments continue to favour extensive mining.

There are no soil conservation laws, either at the state or central level which will necessitate top soil conservation measures. However, since mining constitutes a non-forestry work, it comes under the purview of the Forest Conservation Act, where forest lands are involved.

The Rules under the Forest Conservation Act lay down specific measures for compensatory afforestation where mining has been permitted by the central government. (Section 4.11 of the Rules; (Under the Forest Conservation Act the permission of the central government is required before any mining can take place in the state forest lands).

Section 7.2 of these Rules had laid down that the provisions concerning compensatory afforestation will not apply to mining leases which were given prior to 1980, that is before the coming of the Forest Conservation Act. However, the Supreme Court has changed the law on the matter by interpreting this section differently. It has laid down that a renewal of a lease is the same as the grant of a fresh lease. (*Delhi Development Authority v. Durga Chand Kaushik*, A.I.R. 1973 SC 2609, and also *State of Bihar v. Banshi Ram Modi*.) Any continuance or renewal of mining lease on forest lands, therefore, attracts both the provisions of the Forest Conservation Act, i.e. Section 2 for prior approval by the centre, and Section 7.2 for compensatory afforestation. Section 7.4 of the Rules under the Conservation Act states that land identified for compensatory afforestation (by the Revenue Department) will be transferred to the Forest Department.

The administrative infrastructure for monitoring compensatory afforestation, however, is as yet grossly unsatisfactory. There is one single officer in the Ministry of Environment, at the central level, who is given the task of following up the execution of compensatory afforestation. As a consequence, the provisions of the Forest Conservation Act are hardly enforced.

There are two additional problems. A great deal of the lands involved in mining are not forest but revenue lands, and hence do not come under the purview of the Forest Conservation Act. Secondly, the amount of free revenue land available for compensatory afforestation is very limited. What is necessary is that soil conservation and compensatory afforestation must be done on the very land which is destroyed due to mining. Neither the Forest Conservation Act, nor the West Bengal Forest Act, necessitates this. This is mainly because a mining technology which can carry out simultaneous (or subsequent) soil conservation is prohibitive in cost. The forest laws, therefore, sacrifice the ecological cost for the immediate industrial benefit.

The lands leased out for coal mining come under the Coal Mines Authority of India. The Authority has recently put up a proposal for the regeneration of denuded lands to the West Bengal Government. The proposal is still under consideration.

It must be noted that mining operations attract not only the Constitutional provisions, such as Articles 19(1) right to reside and 21 - right to life and livelihood, but also customary and statutory rights of the people under the Forest Act and the Easement Act. By and large, in mining operations such rights of the under privileged people have been ignored and minor compensation given to them for the loss of such rights. This is specially true in the tribal areas. The people have not been able to claim their appropriate rights and compensation simply because they do not have access to the legal system or the administrative infrastructure. If mining operations were to take into account not only compensatory afforestation but also compensating the loss of people's rights appropriately, the

actual costs would be far higher than what is presently calculated.

b) Commercial Use of Forest Lands

The federal Forest Conservation Act, 1980, prohibits use of forest lands for non-forestry purposes without the permission of the central government, but it does not require that the state governments must take permission for contracting out or leasing out the forest resources to industries. Unlike in other states, such as Maharashtra, the West Bengal government has not made long term contracts on forest resources with the industries. The contracts are reviewed annually. Since the commercial forestry work-plan has no compensatory afforestation requirements, over the years the resources of the state have been grossly depleted. The Central government, through a circular, has banned the complete felling of trees for commercial harvesting. Despite this ban, however, forest resources continue to be supplied at a subsidised rate to the industries. Currently the government is supplying timber at the rate of Rs. 350/- (Rs.225+Rs.125 tax) per metric ton to the industries, whereas the market rate is about Rs.600/- per metric ton.

The industrial policy and the laws need to be obviously reconsidered in the light of the National Forest Policy. The province and nature of the Forest Conservation Act also needs to be seriously reconsidered - whether it needs to be bothered about the conservation of forest lands alone or also about the resources on these lands.

A major amendment in the Forest Conservation Act is recommended so that the law regulates the use of resources too and not merely the land, otherwise the aims of the National Forest Policy cannot be achieved (coverage of 1/3 land area by forest).

If industrial growth is to be self-supporting and sustained it is necessary to abolish all subsidies and incentives. Getting raw material at lower rates from natural forests is a major loss to the overall national economy, although it may benefit the

industry for a short while (till the natural resources last, which is estimated to be about 20 years at the most). From the long term economic perspective it will be better if the wastelands are commercially developed to provide a perpetual resource base for the industries. These wastelands are not likely to be developed either by the forest department (or corporation) or the industries as long as the natural forest resources can be inexpensively provided from the standing forests. As discussed earlier, the complete work plan methodology for forestry needs to be changed if a sustained resource base for the industries is to be available. Compensatory afforestation needs to be made compulsory and the cost of regeneration needs to be included in the work plans for harvesting. This can be achieved by amending the Indian Forest Act, 1927 (as adopted by West Bengal) keeping in mind that the National Forest Policy also demands 1/3 of the land area of the state to be forested, compensatory afforestation becomes all the more necessary.

Keeping in mind the shortage of the availability of forest resources the West Bengal government has enacted the West Bengal Forest (Establishment and Regulation of Saw Mills and other Wood based Industries) Rules, 1982, under which anyone seeking a license to run a wood based industry has to first proclaim that the enterprise will not be dependent on the resources from the Forest Department, and that it will be able to sustain itself independently. Apparently, the matchwood industries have been adversely affected by the non-availability of resources at the state level, due to this law. Evidently, this law provides only a compromise measure for the conservation of resources, in view of the fact that the resources are not available, and it also gives an incentive to the industries to generate their own resources. However, the success of such a policy depends much upon the land use policy of the state, in terms of the availability of free-hold land for private forestry as well as the regulation of the timber market. These issues need to be considered separately. Before we turn to this there is one more issue that needs to be looked at carefully. This relates to use of the free-hold or government land for purposes other than forestry, such as for tea and coffee plantation.

c) Tea Gardens

Most of the existing tea gardens land in West Bengal is under the regulation of private authorities, and mainly on revenue lands leased out to these authorities on a long term or perpetual basis. Such lands, therefore, do not come under the provisions of the Forest Conservation Act of the Administration of the Forest Department. Under this Act, however, any new lease of forest lands for tea gardens would constitute a non-forestry purpose use of the land, and, hence, would require permission from the central government, under Section 2 of the Act.

Some of the lands with the tea gardeners are 'resumed lands', that is lands which were transferred by the Revenue Department to the Forest Department earlier (before the coming of the Forest Conservation Act), and leased out to the tea authorities. New leases on such lands would necessitate taking permission from the central government, under the Forest Conservation Act.

Since the gardens are, by and large, on revenue lands, the Forest Department is not obliged to regenerate these lands. They can, however, assist the tea authorities in carrying out afforestation on their lands.

The tea growing enterprise constitutes an 'industry' under the Industrial Regulation and Development Act. As such they are entitled to get forest resources from the Forest Department at a subsidised rate. Till about two years ago the Department had been supplying the gardens with about 75,000 MT of timber. At present this has come down to about 25,000 MT. All this wood has been supplied at a subsidised rate of Rs. 250/- per metric ton, whereas the market rate has been about Rs. 600/-. Legally, the Forest Department is not obliged to supply timber to the tea gardens, and certainly not at a subsidised rate. As noted earlier, these subsidies are a dis-incentive to the tea authorities to grow their own forest resources and become self-sustaining.

The 'resumed lands' which were transferred to the Forest Department and later leased to the tea gardens were very often

private forest lands, acquired under the West Bengal Private Forest Act, or the Indian Forest Act. As such most of these lands were burdened with either customary rights or statutory rights of the people under the forest laws. When these lands were leased to the tea gardens the rights were also transferred along with the lands. Over the years most of the forests on such lands have been either denuded or converted into tea gardens. The rights of the people, however, still legally exist. The satisfaction or realisation of these rights is a matter of private arrangements between the tea authorities and the people. The Forest Department does not come into the picture. The tea authorities are legally free to either provide timber and other usufructs to the people or simply pay them compensation. The violation of the rights, however, will at once attract Articles 21 and 39 (b) & (c) of the Constitution, and the people will have a recourse to the courts to find appropriate remedies. To meet the rights of the people there is nothing in the law which prevents the tea gardens from growing fuelwood species and supplying the resources to the people and to themselves. Alternatively, under compensatory arrangement, the tea authorities could provide coal or kerosene to meet the fuel rights of the people. The government cannot dictate this through a law or notification.

4. Private Forestry and the Land Laws

Commercial and social forestry need not be limited to forest areas alone. It can also be supported by private forestry, which can be carried out not only by farmers but also by groups, such as societies, cooperatives and village panchayats. However, the possibility of successful private forestry depends a great deal on the general land use policy of the state and the legal framework that governs such private lands and the resources grown on them. Private forestry for industrial or other purposes will, therefore, require a consideration of land-use policy and the legal framework for private lands in general. It is to these considerations that we must turn now. It must be kept in mind that even the productive forestry by Forest

Corporations is closely tied up with the availability of resources from private sources.

There are a number of laws which directly or indirectly determine the land use practice in West Bengal. The land use policy (the one in actual practice) is, therefore, the one that these laws prescribe and not what any other official land use policy may say, including the National Forest Policy (or government notifications which say that cooperatives, non-government organisations and other private agencies must be involved in the afforestation and use of land). Some of the important laws which determine land use and what sort of individual or organisation can actually use it, are : The West Bengal Agricultural Lands (Ceiling on Holdings) Act, 1961 ; The West Bengal Non-Agricultural Tenancy Act, 1949; West Bengal Land Reforms Act, 1955; The West Bengal Estates Acquisition Act, 1953; The West Bengal Urban Land (Ceiling and Regulation) Act, 1976; the West Bengal Private Forests Act; and The West Bengal Forest Produce Transit Rules. Evidently, it is neither possible nor necessary to go through the diverse provisions of these Acts. The general land use policy and practice must be analysed within the context of these laws, since at the ground level they determine the type of forestry that is possible outside the forest lands and consequently the use of such lands.

a) The Land Ceiling and Land Reforms Laws

The West Bengal land ceiling laws limit private ownership to 12 acres of agricultural land for a family. There are relaxations for farmers cooperatives and joint farmers groups, but these are for agricultural purposes only. Richer landlords and industrial companies carry on forestry work on fertile agricultural land through the various loopholes in the law. An economically viable forestry work evidently requires much larger pieces of consolidated land than are available under the ceiling laws.

Since forest land is controlled by the forest department, and since the department, in any case, is willing to supply the

resources from such lands, the industry's direct interest is in exploiting the fertile agricultural lands for the generation of raw material, and not wastelands. Economic costs and productivity clearly make it more practicable for the industries to go in for the fertile agricultural land than wastelands, so long as this is possible under the laws (through the loopholes). Given this market and legal logic, the natural consequence will be that over the years the area of wastelands (denuded forest lands) will progressively increase and more and more of the fertile agricultural land will be used for forestry purposes. This is already being seen in many states, such as Haryana and Gujarat. Also, for absent landlords plantation of trees becomes a method of protecting their land from encroachment and the hassle of agricultural laws (such as the rights of the tiller if he tills it for more than a certain number of years). Such landlords are not really interested in good quality productive commercial forestry, even a minimum return will do, so long as their land remains protected. A great number of 'farm forests' in West Bengal (including in Haryana, Gujarat, U.P., and other states) seem to be of this type, which is all right from the point of view of the landlords but not good from the point of view of national economic productivity.

Now a clear headed thinking and understanding of land use is required here - as to how much of the fertile (irrigated) land does a state want to reserve for agricultural purposes and how much can it put in for forestry. This evidently depends upon the state's food and agricultural policy besides the forest policy. It is no point having land ceiling on agricultural land without putting it in this total context.

The basic question is : has the state used more of the productive (irrigated) land for food production than is required in its food policy? If that is so then the state must determine the extent to which land is required for agricultural purpose, and remove the ceiling on the rest of the agricultural land, making it possible for the industries, cooperatives and non-government agencies to commercially exploit such lands for forestry purposes. This is not to suggest any resurrection of landlordism (zamindari) the ceiling law should make it clear

that is will not apply only in cases of group ownership, such as of companies, cooperatives, NGOs and panchayats, and that too only for the purposes of forestry. In some states, such as Gujarat, the government has already exempted cooperatives from the provision of ceiling laws.

- If, on the contrary, it is perceived that the fertile agricultural land is barely sufficient for food production for the state, it is necessary to find legal means to eliminate forestry on agricultural lands. In such a situation it is not only necessary to enforce the existing ceiling law more stringently, but also necessary to pass another law totally banning forestry on agricultural land. Such a step is urgently required even for the development of wastelands (denuded revenue or forest lands), for, as noted, so long as it is economically cheaper and more profitable to do forestry on agricultural land why should any industry turn to the wastelands; and also so long as the forest department is allowed to give the resources from the natural forests to the industries why should it really bother about the development of wastelands. If the state perceives that the protection of both the natural forests and agricultural land is of paramount importance, and that the wastelands need to be developed, then this double pronged legal strategy is the only way out, namely, ban the supply of raw materials from natural forests and ban forestry work on agricultural land. This will force the development of wastelands, which would evidently be less profitable immediately, but more profitable and sustainable in the long run for industrial development. After taking these two steps the wastelands (revenue and forest lands) can be allotted to the industries, cooperatives, panchayats, NGOs and other agencies, with strict provisions that the land can be used for forestry purposes only (the provisions of the Forest Conservation Act will not be violated). Allotment of the wastelands without taking the above two steps is unlikely to lead to the regeneration of wasteland.

One of the major reasons why the Forest Corporations have not been successful is precisely due to these two factors - the continued supply of raw material from the natural forest resources, and the industries attempts to get the remaining

resources from private lands. There is very little economic or legal necessity for the Corporations to develop the wastelands for commercial purposes which is the essential task given to them. Legally the Corporations are competent to enter into joint financial ventures with the industries (on a joint management and joint capital investment basis). But in the present conditions it makes little economic sense for the industries to enter into such joint ventures with the Corporations. The formation of the Corporations is in itself not a wrong or bad legal strategy, it is a method of retaining the ownership and control over forest lands, as public (government) lands, and still at the same time allowing the industries an access to such lands. But the economic viability of such a strategy is related to the corresponding availability of the resources from forest and private lands, that is, on the demand and supply situation. So long as the demands continued to be met from these other sources the function of the Corporations will continue to be marginal.

Which of the above two legal strategies is more appropriate for the state - whether banning forestry on agricultural land or liberalizing forestry on such lands, is a decision which can be taken only through mutual discussions between the Ministry of Forests, the Ministry of Agriculture and the Revenue Department, depending up on the amount of land required for food production etc. Agricultural land, being a state subject, can be handled by the Department of Revenue and Department of Agriculture alone, whereas for forest lands both the state Ministry of Environment are competent to take the decisions.

b) Private Forests Regulation Laws

Through the West Bengal Private Forests Act and the Estates Acquisition Act, which are still operative, all private forests can be regulated by the government (Forest Department). The Act makes all forests grown on private lands liable to be acquired by the state and hence acts as a deterrent to the people to carry on private forestry. The reason for the enactment of this law at that time was the observation that the landlords did not really care about the forests and that the

lands were getting progressively denuded. But in the present context, evidently, such a law is contrary to the possible success of any private forestry, even if the ceiling law is changed. There seems to be a ubiquitous apprehension (and a genuine one) amongst private land owners that land planted with trees are liable to be going out of their possession and control. There is also a similar apprehension at the official level that revenue and private lands planted with trees will be regulated by the centre and go out of the control of the state level officials, due to the Forest Conservation Act. Both these apprehensions are antithetical to the growth of private forestry, whether by individuals or groups.

The provisions of the Private Forests Act obviously need to be rationalized if private farm forestry is to be encouraged. Now that it has served its purpose - of acquiring denuded and surplus ceiling lands, it should not be made to apply to all new private forestry ventures.

The scope of the Forest Conservation Act also needs to be similarly made explicit so that it does not include village forests (panchayat forests), private forests, and forestry by NGOs and cooperatives, even if done on forest lands or revenue lands allotted by the government. Such forests need to be regulated by other state made laws, such as within the Panchayat Acts, Cooperatives Acts, Societies Act and the Companies Act.

According to the National Forest Policy the rural areas are to be made self-sufficient in their resource requirements, specially fuel and fodder needs. The general thrust of the forestry plan should be to re-create as many village forests as possible which will be maintained on a sustained yield basis where villages do not have land for such forests revenue or forests land need to be allotted for this purpose. This has been partly the thrust of the social forestry programmes. The spirit of the Private Forests Act, the West Bengal Forest Act and the Forest Conservation Act, however, seem to be oblivious to this demand of the National Forest Policy.

c) Forest Produce Transit Rules

This Act, through its schedule, restricts the kind of trees that can be felled and transported from private lands. These restrictions become disincentives for private enterprises, and indirectly determine the species that are planted on private lands (that is species which fall outside the schedule, such as eucalyptus, acacia and poplar, and for which official permissions will not be required). This law, therefore, although it is not its intention, decides land use for forestry in a major way, in so far as private and revenue or panchayat lands are concerned. There is a need to rationalise the law, by making it apply only in areas where natural forests exist and their protection is required. In all other areas the people must be free to select the species (and determine land use) according to their needs.

It is only after the amendment of these land and resource laws that people can freely and effectively participate in forestry work. It is a well recognised fact now that the Forest Department alone cannot provide all the growing fuel, fodder and timber needs of the people. The manpower required to generate the resources for providing such basic needs would be on the same scale as that of agriculture, and such manpower is just not available with the Forest Department. The involvement of other agencies, such as private farmers, non-government organisations, cooperatives and statutory bodies like the panchayats and municipal corporations, is inevitable. Let us turn to note the other legal factors, besides the land laws, that need to be taken into account for a successful people's involvement in forestry.

5. Joint Management and People's Participation

The major agencies, besides the Forest Department, who can engage themselves in forestry work are : NGOs, cooperatives, panchayats, municipalities, notified groups (such as Forest Protection Committees, Mahila Mandals, Yuvak Mandals etc.), and educational and religious institutions. The

institutions, evidently, can be only marginally involved since their main tasks are of a different nature.

The June 1990 Notification of the central Ministry of Environment has directed all state Forest Departments to involve NGOs, cooperatives and other private agencies in forestry work. The Notification provides usufruct rights to such agencies and not land allotment. This is indeed a progressive step, but the problem is that the number of NGOs and cooperatives are too few to carry out the volume of work required. Moreover, most of the non-forest lands are already vested with the panchayats, municipalities and other statutory bodies. Hence, the only land available are the wastelands with the Forest Department, which come under the purview of the **Forest Conservation Act**. **Vide** the June Notification, it can be presumed that the permission has been given by the Centre to involve the NGOs, cooperatives and other private agencies, to work on the forest land. The Forest Department needs to encourage this where possible.

It is interesting to note that the attempt to involve people on forest lands stands in direct contrast to the earlier social forestry programme where the main thrust was on assigning usufruct rights on revenue lands and keeping people away from the forest lands. (See, for example, West Bengal government Notification No. 9110(15)-G.E./423/84/ Norms for distribution of vested/wastelands). This model did not work because, first, there was not enough revenue land to distribute or give usufruct rights on, and second, people's right were not legally secured and hence their involvement was superficial.

In a latter model the government took over vested/non-agricultural lands from the panchayats and handed them over to the Forest Department, on the promise that the Department will carry on community based forestry on such lands. This model, in fact, does not amount to people's participation. It has the same legal thrust as that of the Private Forests Act or the Estates Acquisition Act (this model is being tried through the West Bengal government order No : G.O. 2749(16) - G.E. of Cal 3.4.90).

West Bengal has taken the progressive step of forming Forest Protection Committees, with which the Department is willing to share 25 per cent of usufructs for protection of the Department's plantations. The decision to share 25 per cent is on an arbitrary trial basis. The noteworthy fact about these Forest Protection Committees is that in their organisation the government has incorporated the chief members of the panchayats so that there is no conflict of interest between these Committees and the panchayats. The Forest Ranger, however, still holds more responsibilities and decision making powers than the village sarpanch (elected head of the village council) within the functioning of the Committees (the relevant government orders are : 4461-For.D/IS-16/88; 5962-For/D/IS-16/88 dated 12.7.1989 and 27.7.1990, respectively).

Although the formation of such Committees is administratively advantageous, it must be noted that these agencies, formed by government departments through orders, are purely ad hoc bodies who do not have a legal standing. They have only an administrative recognition for the purposes defined and from the concerned government Department. A new government or administrative agency is not bound to necessarily follow the orders of the earlier government. Moreover, being non-statutory bodies, such agencies have no legal power to bargain with the Department for terms and conditions, nor are they eligible for credits or loans from banks or other funding agencies. Also, when it comes to actual work, such agencies will have to work on lands which are, by and large, allotted to panchayats, municipalities and other statutory bodies, such as the Forest Department. As far as panchayat lands are concerned, although the panchayat can pass a resolution to allow such ad hoc committees to work on its land, the final power to use the resources or define the rules of benefit sharing remains with the panchayat and not with the Committee. On forest lands, of course, the Department can set the benefit sharing rules.

In the final analysis, it is only the elected, statutory and constitutionally warranted bodies, namely the panchayats and municipalities, which are the legally viable agencies available

for forestry work. As long as these democratically elected bodies continue to exist, they will continue to make demands both on land and its resources. Therefore it will be wiser for the Forest Department to work with these agencies and strengthen them, rather than set up a number of new agencies who have no statutory standing. The Forest Protection Committees can be set up as a committee under the Panchayat Act (the act provides for this) rather than an agency legally separate from it. In terms of numbers too the panchayats and municipalities are ubiquitous. There is no question of the non-availability of such agencies. Once the agency with which the Forest Department has to work for the purposes of social forestry has been settled, there are a number of other minor issues that need to be attended to for ensuring success.

Firstly, the schedule of 'forest' trees under the Forest Act needs to be rationalised so that people have a much greater freedom in selection of species. The rules need to be enforced only in the vicinity of genuine reserved or protected forests and not on all private lands.

Secondly the transit of timber rules, under the Transit Rules, needs to be similarly rationalised. Again, they need to apply only in areas where there is a genuine possibility of theft of government timber, that is, close to government forest areas. The rule need not apply in all places.

Thirdly, the state government must ensure that for forestry work the people get at least wages in accordance with the Minimum Wages Act. The work under this Act can be classified as 'industrial labour' so that people are attracted to undertake forestry labour.

It has been argued that the best legal strategy will be to empower and engage the panchayats in all rural areas to carry out forestry work so that the villages become self sustaining. Since this is a central idea for social forestry it needs to be explored and explained in greater detail. The viability and legal requirements of village forests will be explored in what follows.

6. Village Forests

To generate the forests which will serve the people's fuel, housing and other timber needs, it is necessary not only to change the tree felling and species regulations laws, as mentioned earlier, but also to amend the basic statute which regulates the elected people's organisation at the grassroot level, namely the Panchayat Acts. By and large, at present, people's fuel and timber needs are being satisfied from forests with the forest departments. A major cause of denudation is the unregulated usurpation of the resources by the people from the forest areas. The need to create village forests is, therefore, immense if the remaining natural forests are to be protected. Under various social forestry programmes attempts have been made to create 'community woodlots' or 'village forests' on panchayat or revenue lands. Such forests have been generated by the forest department and often simply handed over to the panchayats, without the requisite legal safeguards for the management, protection and sustenance of such plantations. In Maharashtra, for example, three year old plantations have been handed over to the panchayats, without any conditions being laid for the future. Numerous examples of social forestry, such as in Tamilnadu, have shown that such handing over does not at all guarantee the future existence of such forests. A permanent solution can come about only if amendments are made to the Panchayat Act itself, and not merely through government orders or notices. The Panchayat Acts must necessarily incorporate the following types of changes. The Act under consideration here is the West Bengal Panchayats Act, along with the Rules made under this Act, which are applicable to the whole of West Bengal.

- a) The Act must provide that the land vested in the panchayat (or allotted to it by the revenue or forest department) cannot be used for any non-forestry purposes. In the same way as the Forest Conservation Act restricts use of forestry land the West Bengal Village Panchayat Act gives power to the state government to vest land in the Panchayats. Some of the

lands earlier vested in the panchayats, which became encroached or were being cultivated for private purposes, were acquired by the state government under the West Bengal Private Forests Act. The fact that lands vested in the panchayats get encroached does not by itself become a good reason to take the land away from them. Land encroachment also occurs on revenue, forest and other public land. By this logic, such lands would have to be acquired from the state too and nationalised. What one has to find is the reason due to which the panchayat lands get encroached and then try to remove these difficulties. If one looks at the functioning of the panchayats the problems can be identified. So far the panchayats have not been provided enough funds even to hire a guard who can protect the panchayat lands and the resources on them. The financial and managerial infrastructure required to utilise the common lands has just not been available with the panchayats. Simply vesting land or resources in the panchayats and putting duties on them to protect these resources, as the Panchayat Acts do, will not work. Duties cannot be performed without the correlated powers and rights. Like other Panchayat Acts, the West Bengal Panchayat Act provides for 'panchayat funds' from various sources (section 57). Development funds can be provided to the panchayats (as village funds) by the state government, with clear instructions and restrictions, that such funds are meant for the purposes of village forests only, for works such as salary of forest guard, fencing, and other protection measures. Funds can be directly allotted to the panchayats by the state government under the Panchayat Act.

- b) The Panchayat Act must bar clear felling of village forests. It must allow harvesting on a rotational basis, in a scientific manner, in consultation with the forest departments.

- c) The Act must necessitate that 20 per cent (or more) of the revenue earned from harvesting of the village forests must go back into the regeneration of the forests.
- d) The Act must lay down clear rules for benefit sharing and use of the forest resources, as well as the duties involved in planting and protection.
- e) The Act must allow the panchayats to retain the funds generated from forestry work and include it in the village development fund. At present revenue arising from common village resources goes to the Zilla Parishads and then finally to the state government. No group of people can ever be interested in simply developing a resource when they know that they will have no control over the benefits arising from it.
- f) The Panchayat Act empowers the panchayats to form committees. The state must instruct the panchayats to set up committees for protection of village forests and for ensuring benefit sharing. Funds must be provided to the panchayats to set up and operationalise such committees.

In brief, if village forests are to exist, the Panchayat Act must embody some of the important features of the Forest Act and the Forest Conservation Act. Necessary amendment to the panchayat acts in this respect is a matter of urgent necessity. After these amendments are made, land allotment to village panchayats (under section 5 of the Panchayat Act) needs to be done, wherever possible to maximise the number of village forests and lessen the burden of the Forest Departments. Both revenue and forest lands could be allotted to the panchayats for creating and sustaining village forests. It must be remembered that a large area of land presently with the Forest and Revenue Department is precisely that which was acquired by the state under the Forest Act or the Land Acquisition Act.

7. Protection of Wildlife

Protection and conservation of natural forests and wildlife is tied up in a major way with the resource use. The major

reason why the natural forests have been depleted in this century is uninhibited exploitation for industrial purposes. Unless the wastelands, common lands and private lands are now developed to provide for the industrial and domestic needs of the people, there is little hope for conservation. One way in which such lands can be developed early and efficiently is by creating a legal need to do so by totally stopping the supply of resources from the natural forests. The central government's guidelines, under the Forest Conservation Act, to stop clear felling forests, is a step in this direction. However, as noted earlier, there is a need to amend the Forest Conservation Act itself to regulate the resources and not merely the land.

The operative Wildlife (Protection) Act, 1972 protects the life of certain species of animals and birds. It does not, however, deal with the protection of flora and biodiversity in general, nor does it concern itself with the habitats of such flora and fauna, the protection of which is essential if wildlife is to be protected. A comprehensive and practical Wildlife Act needs to operate with a larger concept of protection which must include the flora as well as the habitat. The Act needs to be accordingly re-formulated. To enforce the Act on a rational basis, all the sensitive areas of significant bio-diversity need to be identified. There is a need to have comprehensive surveys which must include wildlife. On the basis of such surveys, areas of significant bio-diversity need to be declared as national parks or sanctuaries.

The fact that protection of forest areas involves protection of total habitats is not understood, and hence not included, in the existing forest laws. The Indian Forest Act, 1927, needs to be amended to include watersheds and catchment areas and totally protect them, if water resources are to be available for the growth of forests. Mining in forest areas, similarly, needs to be strictly regulated under the Forest Act. At present, it concerns itself merely with the giving of licenses. The guidelines under the Forest Conservation Act demand compensatory afforestation, but as yet, it does not include provisions for proper soil conservation measures. Instead of monitoring compensatory afforestation from the Centre, it

would be better to amend the Indian Forest Act so that soil conservation and afforestation can be made compulsory in all cases of mining and monitored by the state government.

8. Forest Villages

A major issue in the protection and conservation of natural forests and wildlife is that of villages or settlements inside the forests. In some states, such as Maharashtra, forest villages have been transferred to the Revenue Department, and hence these villages are legally classified as 'revenue villages'. This implies that the normal development work under the Tribal Sub-Plan and other programmes can take place in these villages without confronting the provisions of the Forest Conservation Act. In West Bengal, on the contrary, there are no revenue villages inside the forests. There are 108 villages inside forest areas all of which are classified as 'forest villages'. Of these, 48 villages are encircled by reserved forests. To remove any confusions about the application of the Forest Conservation Act to the villages inside forests and developmental works therein, the central government has issued an explicit Notification which states that developmental work can be carried on in such villages provided the State makes the grant of inheritable and inalienable rights of lands to the forest dwellers (Notification No : 11-39-83-FRY (Cons) , Ministry of Agriculture, dated 23.3.1984; and No. 11-39/83-FC, Ministry of Environment and Forests, dated 31.8.1988). However, the states, including West Bengal, have not been forthcoming in making such inalienable grants to the forest dwellers. They have been more interested in rehabilitating the people in non-forest areas, due to various reasons. Consequently, the developmental programmes have not been extended to the forest villages. In West Bengal only the centrally sponsored Jawahar Rozgar Yojana (an employment scheme) has been sanctioned for such areas. The government, at the same time, is making plans to move the 48 villages out of the reserved forest areas.

It must be noted that the dwellers in the forests have a fundamental right guaranteed to them under the Indian

Constitution - Article 19(1), the right to reside. They can appeal both to the High Court and the Supreme Court if the **government attempts to forcibly evict them.**

However, on the other hand, it would be equally important to note that where such villages fall within areas which are national parks or sanctuaries, or where protection and conservation measures are essential, development works such as road construction, are evidently counter-productive. The issues involved herein need to be considered carefully. It is often made out that in such areas there is a conflict between 'development' and conservation. A deeper scrutiny of the situation will make it clear that infact, the conflict, where it does exist, is external. It is usually the local political process which demands such development works, not the tribals or the forest dwellers. The funds provided for such work too, by and large, remain with these external agents. What the tribals and forest dwellers have been basically demanding since long is the preservation of forests. It is the forest resources that they need. In the interest of such people and in the interest of the biogenetic diversity, there is an 'urgent need to cease all 'development' work in the sensitive protected areas and enforce the law strictly for conservation. The areas need to be protected along with the tribals and forest dwellers. The argument that denial of 'development' work in the protected areas is violative of article 14 of the Constitution (equality before the law) holds no grounds in this case, because, firstly, the preservation of these areas is to be done in the interest of the forest dwellers and in national interest; and secondly, in the long run, development of these areas consists of their preservation and not destruction. It is likely that the forest dwellers may want to lead a modern urban life-style in the coming future. This does not mean that this needs to be provided in their very habitat. Millions of people have migrated in India from rural areas to urban areas for better opportunities, and have also migrated outside India for the same reason. The forest dwellers can do the same, but, of course, the option must be theirs. If the forests are preserved they have a genuine choice, to remain within or migrate to other areas, but if the forests are to be destroyed, the options are foreclosed. For the sake of leaving the options open for the forest dwellers and for the future generations protection and conservation of forests is matter of utmost significance.

Chapter Six

NATIONAL SOCIAL FORESTRY PROJECTS IN HIMACHAL PRADESH, GUJARAT, UTTAR PRADESH & RAJASTHAN

Introduction

Of India's total land area 23% or about 75 M ha, is designated in land revenue records as "forests", mostly Government-owned. Increasing pressure of population and of cattle has resulted in over - increasing depletion and degradation of much of the natural forests so that only about 40 M ha of this land is actually covered with trees. Deforestation has taken the shape of either outright clearing for agriculture or the slow and continuous decimation, often illegally, for meeting the fodder, fuel and timber needs of the community and industry.

Non-commercial energy sources, including fuelwood, agricultural wastes and animal dung, account for more than half of the total consumption of energy in India. Such fuel accounts for about 80% of rural and 50% of urban households' energy consumption. Nearly 55% of non-commercial energy is derived from fuelwood, obtained from reserve forests and from trees grown on private and communal lands. Much of the fuelwood burnt is gathered by women and an estimated 20% of labour available in farming families is spent on this task. Many families, however, due to the absence of forest area near their homes, are forced to burn only dung cake and crop residues.

While existing planting programmes should be able to meet most of the industrial requirements for hardwood and, to a lesser extent, for coniferous pulpwood, they are inadequate for meeting the demand for fuelwood. Fuelwood demand in the year 2000, estimated in a study by the National Council of Applied Economic Research, will be 200 M m³ annually or roughly twice the estimated present level. If fuelwood was substituted for half of the energy represented by cowdung

presently burned, the total fuelwood demand would be about 230 M m³. Adding the annual industrial wood demand of 65 M m³ (compared with estimated 1980 demand of 27 M m³) brings the total annual wood demand for the year 2000 to nearly 300 M m³, equivalent to some 20 to 30 M ha of mature plantation. Recognizing that fuelwood will continue to be an important source of energy, the Government of India (GOI) is focussing increased attention on the development and management of fuelwood resources.

With a view to overcome this serious timber and fuelwood crises and the devastating degradation of the environment, the government of India and the state governments have instituted numerous social forestry projects all over India. Although social forestry development is a state responsibility, GOI assists in it through a number of centrally sponsored schemes, which finance half the plantation costs. During the Sixth Plan, about 1.9 M ha came under these schemes out of a total of about 4 M ha put under social forestry accounting for expenditures of over Rs. 2,164 million. The above figures include farm forestry under which some 3,720 M seedlings were distributed to individual growers. The largest of these schemes, measured by planting area, is Small and Marginal Farmers Programme, started in 1983-84 with 0.8 M ha planted; the other programmes, of 0.35 M ha planted each, are the Rural Fuel wood Programme, Drought Prone Areas Programme and National Rural Employment Programme. In addition, statewide projects with external financial assistance were being implemented in the states of Gujarat, Uttar Pradesh, West Bengal, Haryana, Jammu and Kashmir, Karnataka and Kerala (World Bank-assisted, Haryana and Jammu and Kashmir with DANIDA and Karnataka with ODA), Madhya Pradesh and Maharashtra (USAID-assisted), Tamil Nadu and Orissa (SIDA-assisted) and Andhra Pradesh (CIDA-assisted). These projects account for 0.68 million ha. planted and over Rs.2,500 million in expenditures during the Sixth Plan period. Unlike expenditures under centrally-sponsored schemes which go to direct plantation costs, donor-assisted projects also help to finance incremental staff, civil works and vehicles. Finally, the

states operate their own social forestry programmes which during the Sixth Plan period account for 1.3 M ha planted and over Rs.3,00 million in expenditures.

Of the present India-wide tree planting of some billion seedlings annually (roughly equivalent of 0.67 M ha), about half is planted through farm forestry (by farmers on their own land). The rest is planted by the state forest departments in commercial plantations (30%) and social forestry plantations (20%).

In 1984, four states-Uttar Pradesh, Gujarat, Rajasthan and Himachal Pradesh, prepared proposals for financing with the help of GOI's office of the Inspector General of Forest (IGF) and the World Bank office in New Delhi. The project was financed by the Bank and USAID and is known as the 'National Social Forestry Project' (in Himachal it is known as the Umbrella Project). It is presently in its fourth year of execution, and is to be completed within the next two years. The project's primary objectives are to

- i) increase production of fuelwood, small timber, poles and fodder;
- ii) increase rural employment, farmers' incomes and opportunities for participation of landless persons;
- iii) afforest degraded areas and wastelands and reduce soil erosion; and
- iv) strengthen forestry institutions.

The plantation programme, as initially envisioned under the project is as follows :

PLANTATION PROGRAMME (Equivalent Hectares)

	Plantation Category	Uttar Pradesh	Rajasthan	Gujarat	Himachal Pradesh	Total	Percent Total
A.	Agroforestry (Private Lands)						
	Farm Forestry						
	Seedling distribution	134,000	60,000	200,000	63,000	467,000	71% m/
	Private Wasteland Planting	-	-	30,500	13,000	43,500	6% m/
	Improved (grafted) Orchards	-	4,000	-	-	4,000	1% m/

B.	Tree Tenure, Poor + Landless (Govt. Lands, Beneficiary Managed).	1,210	-	-	1,210	.5% n/
	Strip Plantations d/	11,000	7,500	833	19,333	2% a/
	Household/Group Farm-Forestry e/	1,000	.	.	1,000	.8% p/
	Arjun Plantations f/					
C.	Community Wasteland Plantations (Community Lands, Panchayat Managed)	14,000	5,000	20,000	41,000	9% a/
	Community Woodlots (Rainfed) g/	-	-	5,000	5,000	1% a/
	Community Woodlots (Irrigated) h/	-	-	10,000	10,000	1% a/
	Tree Fodder Plantations i/					
D.	Government Wasteland Plantations (Government Land, Government Managed)	-	20,000	30,000	5,000	6.5% p/
	Rehabilitated Degraded Forests j/	740	4,300	15,000	20,040	2% n/
	Strip Plantations k/	-	-	2,500	2,500	.5% p
	Fuelwood Plantations l/					
Total Plantations		161,950	120,800	313,400	112,833	708,983 100%

However, the above table represents only the plan, not the reality. As the projects have progressed, over last three years in these states, there has been a marked shift in the land categories on which the social forestry programmes are to be executed. The proposals for shift, by and large, have been towards the utilisation of the forest land. The forest departments wish to progressively reduce the extent of revenue and community lands on which the project is to be executed including the tree-patta and land-patta schemes and increase the areas of work on forest lands. One major reason for this, as the forest departments have reported in all four states, is the legal difficulties faced by them and the beneficiaries on community and revenue lands. There are legal difficulties in not only identifying the revenue wastelands and beneficiaries but also in making proper legal arrangements for benefit sharing with the local people. A marked shift away from revenue and common land towards forest lands raises serious questions about the 'social' nature of social forestry. This is due to two reasons: first, the forest department does not have a track record of doing work on forest land for social benefit (most of their work on such land has been for commercial purposes); and second, after the Forest Conservation Act, the decision to use forest land for social purposes does not remain with the states. It has to be taken by the Centre. The central

Ministry of Environment, on the other hand, does not have a track record of permitting the use of forest land for social forestry. If the social nature of social forestry is to be retained, it becomes extremely important to closely scrutinize the legal difficulties in the planned, components, which promised to be social, and also the alternative legal models which will allow the project to be to social benefit despite the change in land categories. It must be noted that an appraisal of the legal aspects is not a matter of concern merely from the point of view of equity and social justice, but also of direct economic consequences. If, for example, the legal appraisal shows greater feasibility of doing social forestry on forest lands and immense complexity of doing a tree-patta scheme on community lands, then in terms of resource and labour input social forestry on forest lands would clearly be more appropriate than on community lands. Let us note first the different aspects of a legal feasibility appraisal, and what precisely the outcomes of such an appraisal can be. Since the idea of a legal feasibility report is new to many planners, it requires some explanation.

Legal Appraisal

In its first step, legal feasibility appraisal essentially consists of evaluating whether the plan objectives can be achieved within the network of laws and rules that apply to the project. This is true of any project whether it be one of forestry, irrigation, dams, energy resources or housing. All human habitats, resources, people, offices and capital are regulated by a grid of rules. Any management or planning is possible only within this grid. Every project, therefore, must carry out the legal appraisal before finalizing the design. At the planning stage itself the legal and illegal situation must be known and appraised and the designing done accordingly. In the traditional planning or designing methods, however, the legal aspects are not considered as a variable. They are encountered only when the execution of the project begins.

In its second step the legal feasibility work should creatively prepare the legal models that need to be adopted - in terms of leasing, contracting, handing over lands, goods or

management, benefit-sharing, etc. to achieve the objectives of the project. All this within the framework of existing laws.

In the third and final step the appraisal should define the arena of legal work that is not already covered by the laws, such as amending the relevant laws, where necessary, passing appropriate government orders, notification in the gazettes etc. All these three steps assume that the objectives of the project are invariant. If the appraisal finds that the achievements of the objectives is impossible within the legal and political framework, changing the objectives may also be considered.

Let us turn to see now how these three steps apply in the concrete context of this social forestry project.

A) For agroforestry on private lands the following issues would be relevant :

(a) Status

- i) what is the legal nature of the land tenure of the 'private' land?
- ii) what is the legal arrangement with the forest department for plantation, maintenance and harvesting? Are they of a nature which is in accordance with the project objectives?
- iii) does the land utilization come under the purview of the Land ceiling, Land Reforms or Development Acts? If so, does the project design take care to see that the objectives of these Acts are met?
- iv) Are there legal restrictions on felling, harvesting or transport which will deter the private farmer from agroforestry?
- v) Are there taxes on trees, income tax, wealth tax, etc.?

b) Legal Models

- i) Describe the legal arrangement that the forest department has made with the private farmer (through the government order).

- ii) Does the arrangement guarantee autonomy to the farmer or is it a joint management plan? (Such as under Sec. 38 of the Indian Forest Act).
- iii) Draw up the appropriate legal arrangement for harvesting, pay-back to forest department, etc.

c) Ammendment and Action Plan

- i) Have the relevant government orders been passed for the requisite arrangements between land holders and government departments?
- ii) Do the orders identify the requisite beneficiaries?
- iii) Suggest the specific orders that need to be passed by the relevant government departments for realizing the objectives.
- iv) Suggest the ammendments to the laws that need to be made to operationalize the project plans.
- v) Work out the inter-departmental and inter-governmental action plan that need to be executed to bring about the amendments and pass the necessary orders, notify in the gazettes, etc.

For the other components of the project, such as community woodlots, tree-tenure etc. similar legal appraisal would have to be carried out - the existing legal status would have to be first determined, appropriate legal models would have to be drawn up and the necessary action plan suggested.

The necessity of this type of legal appraisal needs little justification. It would be evident that wherever the legal framework provides conditions contrary to those desired by the objectives of the project, such objectives cannot be achieved without amending the legal framework. For most parts, the past experience shows that not much observation and thinking has gone into the legal matters while planning social forestry schemes. Thus, numerous community woodlots schemes have been planned in various states without observing whether there is a legal frame-work within which the 'community' can be made beneficiaries and the bearers of rights and duties,

whether the community is best defined in such contexts in farms of panchayats, cooperatives, societies etc. Ad hoc organizations have been created to represent the 'community', such as the Village Forest Committees, Mahila Samitis etc. which do not have a corporate existence in law and hence no right to bargain or take loans. Where panchayats have been taken to represent the community, it has not been appraised whether they, as they are presently constituted, have the capacity, rights and duties to carry out forestry. Other schemes, such as tree-tenure or land-patta schemes are often equally divorced from the realities. If the beneficiaries do not have legal and economic support to hold on to their rights or to harvest and market the trees they have been allotted, it makes little sense to grant them usufruct or tenure rights.

The legal aspects thus are important not merely from the point of view of equity and social justice, but for the very possibility of the execution of the designs. Objectives which do not match the objectives of the law have little chance of being realized. The objectives of the existing forest laws and the rules made under them are, by and large, very different from those of the planned social forestry projects. This is not surprising because the earlier laws had a different objective namely state monopoly and exploitation of the forest resources.

The legal appraisal of the National Social Forestry Project, in the four states, the details of which now follow, was executed with the above mentioned methodology. This methodology can be applied to any other land based resource utilization or management project.

HIMACHAL PRADESH

Status

1. The laws which have direct or indirect bearing on the Social Forestry Project are as follows :

The Indian Forest Act, 1927.

H.P. Land Preservation Act, 1978.

Forest Conservation Act, 1980.

H.P. Forest Produce (Regulation Trade) Act, 1982.

H.P. Preservation of Forest & Maintenance of Forest Based Essential Commodities, Act 1984.

H.P. Resin and Resin Products (Regulation of Trade) Act, 1981.

H.P. Panchayat Act, 1968.

H.P. Village Common Lands Vesting and Utilization Act, 1974.

H.P. Ceiling of Land Holdings Act, 1972.

The Societies Registration Act, 1860.

2. (a) In H.P. people have traditionally and extensive rights in forest, since the settlement of rights under the Indian Forest Act was not done. The social purposes have been served by the natural forests; 'social forestry', therefore, takes a different meaning in this state. It primarily means using some private land (lying fallow) for plantation of forest species and rehabilitating some community land.
- (b) Since the land transfer, from the Revenue Department (which acquired all common lands, forests and shamlats, earlier i.e., before 1952) to the Forest Department is to still take place in most areas of H.P., appropriate legal models for community woodlots have not been worked out. There are some government guidelines, but they do not take into consideration the complex legal ownership issues. The scheme for tree-tenure is also at the consideration stage only. This is

once again due to the non-clarity about the legal status of the land on which tree-tenures are to be given.

- (c) Farm forestry is being carried out through a joint management plan with the Forest Department (FD) under Sec. 38 of the Forest Act. This gives the FD the sole right to fell and market the trees, although the benefits go to the private land owner.
- (d) Some forest plantations in H.P. have been looked after by the forest-cooperatives and forest societies.

Land - Status

- (a) Legal status of land in H.P. is complex. To make appropriate legal models for social forestry purposes, this complexity needs to be understood in some detail. Unlike other parts of India, the demarcation of land as 'forest land' began very recently in H.P. Earlier, only a few specific areas were demarcated. A major reason for this is that HP, as a separate political entity, came into being later than other states.
- (b) In the first round, since 1947, most of the demarcated government land with forest coverage was taken over by the Revenue Dept. In 1952, by a govt. notification (under Sec. 4 of the Indian Forest Act, 1927) many areas belonging to the Revenue Dept. were 'transferred' to the Forest Dept. This transference was incomplete because the subsequent settlement (under Sec. 16, 17 of the Forest Act) was not done by the Forest Settlement Officer. Hence the demarcation of such transferred land, as 'reserved', 'protected' etc, was not carried out. Consequently, the Revenue records were not altered. These lands with forest coverage continue to exist in revenue records as revenue lands. The Forest Department's records (in Annual Reports too) which show 32% land in HP as forest lands, are legally void. Actually, only about 10-11% land is forest land.

- (c) Realizing the serious difficulties, the H.P. govt. set-up a special office of CCF-settlement to administer the demarcation process.

Grazing Lands

- (a) The other categories of forest and grazing lands in H.P. are the Shamlat lands and Rakha lands. The Shamlats are common grazing lands which came over to HP from Punjab when the districts and States were reorganized in 1962. The Rakha lands are traditional forest preserves in H.P. managed totally by the local village people.
- (b) Through the H.P. Village Common Lands Vesting and Utilisation Act, 1974 and the Land Preservation Act, 1978, the H.P. govt. acquired all these common Shamlats and Rakas. The Shamlats were acquired by the Revenue Dept. and the Rakha by the Forest Dept. In the land settlement process currently underway all Shamlats are to be transferred to the Forest Department by the Revenue Dept. So far this has been only partly accomplished. As for the traditional Rakha (community woodlots) the local village people still view them from their perspective as their own and continue to manage them. The government, in the meantime, has transferred the ownership to itself. It, nonetheless, has not interfered with the traditional managements so far.

Community Woodlots

The true community woodlots in H.P., as mentioned, are the Rakhas. The government, however, is not following this model for this project component under the Umbrella project. Three have been planted on Shamlat lands, belonging to the Revenue Dept. and on other Revenue Dept. lands (notified as forest land by FD, but not by Revenue Dept.) There is no common land vested with panchayats in H.P. The FD has taken a resolution from local panchayats that the Rural Development Committees (RDC) or the Mahila Mandals will be allowed to work on these government (common, grazing) lands. The

RDCs and Mahila Mandals are non-registered sub-committees under the panchayats, formed by the Rural Development Department for their own projects, the FD is making use of these bodies for social forestry purposes. There is no legal arrangement with the RDCs or the Mahila Mandals for benefit sharing. The FD has made an oral promise to them. But the final decisions for benefit sharing will be made through the panchayats since these other bodies are sub-committees under the panchayat. Until the land settlement is done the FD is legally not in a position to enter into any contract with the panchayats. The legal arrangement in the interim period will have to be made through the Revenue Dept.

The other type of community woodlots in HP are those managed by the Forest societies. These are registered bodies. They, however, come under the Registrar or Cooperatives. The benefit sharing is regulated through the Cooperative Act.

Farm Forestry

The FD has taken up 'joint-management plans', under Sec. 38 of the Indian Forest Act, 1927, to manage private degraded wastelands for farmers. Vide U.P. No.:Ft.60-36/78 (N) 2406, dated 28/7/1984, two alternative schemes are being offered to farmers: (a) 40% investment is offered by the FD, mainly for fencing, and 60% has to be borne by the farmer; (b) the land is treated totally by the FD, after 30 or 40 years when the crop is harvested and sold, 25% of the sale proceed will be retained by the FD and 75% will go to the farmer. Since this type of 'farm-forestry' is being done under Sec. 38 of the Forest Act, the land owner does not have the right to fell and sell the trees on his own.

Recommendations

1. Demarcation and Settlement

Demarcation of forest lands under the Indian Forest Act, following the 1952 H.P. Notification, needs to be done at the earliest, for proper project planning.

2. Transfer of Land

Transfer of forest land from the Revenue Department to the Forest Department needs to be done at the earliest so that the land records can be set straight. The land shown as 'forest land' in the Forest Department records is also shown as revenue land on revenue records. Till this transfer is properly carried out, appropriate legal models for community woodlots cannot be worked out. The tree-tenure scheme will also remain tentative because the Forest Department will not be in a position to issue valid tree-pattas.

3. Farm Forestry

Farm forestry is being carried out through a joint management plan with the Forest Department, under Sec. 38 of the Indian Forest Act. This will give the right to fell and market solely to the Forest Department. This right, alongwith the fact that 100 per cent subsidy is being given, reduces this scheme to an extended Forest Department work and it cannot be truly called 'farm forestry'. Only the 60/40 scheme - where the Forest Departments input is 40 per cent - needs to be adopted, and that too without invoking Sec. 38 of the Forest Act. There is no legal necessity to invoke this section. If the Forest Department wishes to make sure that trees are not removed by the farmers for, say, agricultural purposes, there are other methods such as giving them incentives for surviving trees, as is being successfully tried out in Tamilnadu.

4. Felling and Transit

Regarding regulations on felling and transit of trees, the government has, on the one hand, given an exemption (vide Notification No.: Ft/83-54/76 (M), of 13.10.86) from the provisions of the Land Preservation Act, 1978 and the Forest Produce Act, 1982, for NSFP, but on the other hand farm forestry is being carried out under the Forest Act (Sec. 38), which restricts felling. This anomaly needs to be removed.

5. Community Woodlots

The so-called 'community woodlots' under the Project, are not truly what is intended under the objectives of the Project. These woodlots are not community lands; they were first acquired by the Revenue Department and are now being transferred to the Forest Department. If proper "community woodlots" are to be created, the model of traditional Rakhas (before they were acquired by the Revenue Department by notification) is the appropriate one. The people here already had an indigenous system of forest management. With the government taking over, these indigenous systems of management will be destroyed. The H.P. Government should identify the remaining Rakhas (with forest coverage) and operational indigenous management systems and reinvest them in the communities. Such lands could be vested in the Panchayats, with the provision that such lands could be used only as Rakhas and nothing else. To create genuine community woodlots under the project the H.P. Government will have to first vest land in the panchayats, as is the case in many other states. To protect and maintain such lands as woodlots the H.P. Panchayat Act will have to be amended. Sections 18, 28 and 52 can be amended to make the Panchayats responsible for the maintenance of the woodlots. Section 28, specially, can be changed to make sure that a land once demarcated as a woodlot remains so. Section 45 can be modified to allow to take loans (from NABARD) for the purposes of forestry. Section 116-138 can be modified to assure that the funds raised through harvesting of village woodlots are reinvested in afforestation (the required amount). Chapter 10 of the Act will also have to specify that the funds raised through harvesting a village forest go primarily to the village although the administration of the funds can be monitored from the Zilla-Parishad level. These issues concerning the Panchayat Act will become progressively important in the future, as the 'community woodlots' mature. At present, the Forest Department is engaging the Village Development Committees or the Mahila Mandals through a Resolution of the Panchayats, which allows these sub-

committees under the panchayats to enter a negotiation with the Department. But once the trees mature and larger amounts of money are at stake, the effectiveness of these Resolutions is doubtful. It will be better thus, to enter into direct negotiations with the Panchayats.

6. Tree-Tenure

On shamlats and traditional grazing lands, people have rights in common for fodder, cattle grazing, shrubs and wild fruits. Giving tree tenure on such lands amounts to privatizing the rights for a few and restricting, thereby, the rights in common. Such privatization of rights against rights in common can be challenged in court by other right holders; and the courts will have to uphold Article 14, equality before law, and thus rights in common. Tree-tenure on such lands is therefore not advisable, even if the panchayat has passed a resolution to allow certain individuals (of the Mahila Mandals or the Village Development Committees) to hold tree-tenures on common lands. As a matter of fact, the panchayats Resolution to this effect has no legal validity because the rights in common (to the people for fodder, etc.) did not arise from the panchayat permitting or granting such rights, but preceded it and arose either through customary law or due to the settlement of rights under the Forest Act.

Tree-tenure is viable on land where the people do not already hold rights, such as land acquired under the H.P. Ceiling of Land Holding Act, 1972 and the demarcated forest lands without rights. Revenue land which is not community land can also be used. Giving tree-tenure on forest lands attracts the provisions of the Forest Conservation Act, but the H.P. Government can get the permission of the Centre to operate such schemes where necessary. The tree-tenure schemes, as originally conceived, was to be implemented on revenue wastelands only, not on common lands. This original conception needs to be adhered to.

An appropriate legal model for the tree-tenure scheme would be along the following lines:

- (a) Implement it on revenue wastelands, degraded forest lands or land acquired under the Ceiling Act, and not on Shamlat or other community lands.
- (b) Revenue or Forest Department must actually identify the land available for the scheme and not go merely by the land survey records. These records can be used as the starting point for identification, but actual land availability verification will have to be done for the project scheme area.
- (c) Only that land can qualify for allotment for which verification has been done, both of land and beneficiary. Merely allotting it on the basis of the land survey record or the census records will not qualify. The legal definition of 'allotment' needs to be carefully monitored so that there is not merely a de-jure allotment (of tree-tenure) but a de-facto one.
- (d) Allotment will be complete only when proper legal documents guaranteeing the tree-tenure are in possession of the beneficiary.
- (e) The Forest Department must count as beneficiaries, under the tree-patta scheme, only those for whom steps (a) to (d) above have been completed.

GUJARAT

Status

In the context of social forestry in Gujarat the following laws are directly or indirectly relevant :

The Indian Forest Act, 1927.

(Amended by Gujarat Act, 48 of 1963)

The Baroda State Rules regarding the Removal of Forest Produce, 1963.

Bombay Land Revenue Code, 1879 (Secs : 37-44, 135A, 135B)

The Bombay Land Acquisition Act, 1948
(Secs : 4, 5, 8, 9, 22).

The Gujarat Agricultural Tree Felling Act, 1961

The Gujarat Panchayat Act, 1961.

The Cooperative Societies Act, 1912
(As amended by Gujarat, 1961).

All these above Acts need to be amended in one way or another to make social forestry successful.

Observations

- a) Vide Govt. of Gujarat, Forest Environment Department Resolution No. FLC/1086/2294/V-3 of 6th Feb.1987, the Gujarat Government has placed a moratorium on the harvesting of all annual crops for a period of 5 years beginning from February 1987.
- b) The resolution does not clarify whether it applies to social forestry projects. The various government departments, including the forest department, have however, ceased felling of all trees, on all projects till proper clarification is given. No crops have been harvested by the forest department since March 1987. The department has sought clarification from the government and asked for exemption for social forestry,

for certain commercial forestry and for keeping certain contractual obligations with the NABARD valid.

As it stands, the resolution comes directly in the way of the fulfillment of the objectives of social forestry. No exemption has been given to date.

- c) Under different government orders and schemes, afforestation work is being carried out on the revenue, gochar and panchayat lands by various agencies simultaneously. The Department of Rural Development, thus, is executing the NREP, RLEGP, DPAT and the Drought Prone Area Projects. Land availability for social forestry by the Forest Department is thus very low.

The Village Woodlot : This scheme has been carried out by the Forest Department not only on panchayat lands but also on revenue lands in proximity of the villages. About 10 per cent of such "village woodlots" are actually on revenue lands.

- a) The Usufruct and beneficiary rights on revenue wastelands (not gochar or panchayat lands) are regulated by the Government of Gujarat (in revenue department) order no. 3986-2226(m) of 1st Jan. 1987. Land pattas under this order are to be given to individuals and institutions. The usufruct and beneficiary rights on panchayat and Gochar lands are regulated by Government of Gujarat (in Forest Dept.) order No. PRS-1080-87452-V-3, of 30th April, 1987. This order allows for tree pattas and for harvesting of coupes on panchayat lands so that benefits can be shared between the gram panchayat and Forest Department. Through 1986-87 some village woodlots have been harvested and the benefits shared with the villagers. The reasons for the Forest Department taking up revenue land as "Village Woodlots" is the non-availability of sufficient panchayat lands to meet the targets under the project.
- b) The village woodlot idea is unsustainable unless the Gujarat Panchayat Act is amended to make village

forests a public-purpose (development) activity under the Act and demarcate separate finances and obligations on the panchayat to sustain the village forests. The required amendments to the Panchayat Act need to be made into a part of the action plan under the agreement.

Employment : In Gujarat, the wages of labourers are regulated by the labour commissioner. Employment on afforestation programme is equated with industrial labour and not agricultural labour. As a consequence the daily wage on the Social Forestry project is about Rs. 17.45 currently (Rs. 11+DA). Both industrial and forest labour are regulated by the rules under the minimum wages act. The wage in the project, under this act, turn out to be more than provided for in the project.

Cooperatives : The Gujarat Land Ceiling Act exempts cooperatives from the land ceiling provisions. The state, therefore, has encouraged and established numerous forest cooperatives. These cooperatives, however, participate mainly in the harvesting and marketing of forest produce, including timber, but not in afforestation works. These cooperatives are highly politicized. The new GO, which provides for land pattas to cooperatives, has motivated some NGOs to form cooperatives, including tribals and demand land for social forestry work. The forest lands, on which such cooperatives are to work, come under the provision of the Forest Conservation Act, which necessitates the centre's permission before land allotments can be made. No cooperative has received land pattas on forest land. Both the state and the Centre seem reluctant to make such allotments.

Felling and Transit Rules

The Saurashtra Tree Felling act and various other rules made under the Indian Forest Act put restrictions on felling, marketing and transit of various trees on private lands. These rules not only inhibit farm forestry but also indirectly limit species selection for farm forestry and social forestry. The restriction on species and transit will have to be amended as a

part of the agreement, to make these objectives of the project attainable.

Recommendations

1. The FD Resolution No. FIC/1086/2294/V-3 of 6th Feb. 1987, must be revoked at once. If trees are to be conserved a need wise ban can be practicable. Prohibiting the execution of the social forestry project (in so far as felling and harvesting of village woodlots is concerned) makes little sense. Schemes directly beneficial to the rural poor must be exempted from such bans.
2. The Land use policy needs to be defined more clearly by the government so that different rural development schemes and agencies do not work on the same piece of land. Forestry work seems to be done much better by the Forest Department, in comparison to other departments. Hence, as a part of the land is to be afforested, it will be advisable to engage the Forest Department only.
3. The restrictions on felling and transport of timber, under the Tree Felling Act and other rules, need to be rationalized. A general ban applicable to private lands, patta lands and other lands is meaningless in the present context. In areas which are close to standing natural reserved or protected forests the restriction needs to be imposed but in all other areas, specially those far away from the reserved government forests, all restrictions need to be removed, if farm forestry is to prosper.
4. The Gujarat Panchayat Act, 1961, specially sections 96, 97, 201, need to be amended to make sure that though the administration of village woodlots remains with the Taluka panchayat (Sec. 96, 97) the funds raised out of such woodlots remain with the gram panchayat (Sec. 97(27)). The Act also needs to be amended from the point of view of the duties of the Taluka and Gram Panchayats to make sure that afforestation is carried out on a continuous basis on the village woodlots. The finance for regeneration must come out of the sale of village woodlots coupe. If the land is

vested with the panchayats, some land (Village woodlots) should be marked off for forestry purposes only.

5. The tree-tenure scheme should be executed on government lands acquired under the Ceiling Act, and not on grazing or other common lands where the people have grazing, fodder or rights. Degraded forest lands can also be used for this purpose.

UTTAR PRADESH

Status

The following laws, directly or indirectly, regulate forestry in U.P. The relevant sections of these laws will have to be made consistent with the objectives of social forestry:

The U.P. Panchayat Raj Act, 1947.

The Indian Forest (U.P. Amendment) Act, 1951, as amended in 1956.

Imposition of Ceiling on Land Holdings Act, 1960.
(Amended in 1976).

Land Acquisition (U.P. Amendment) Act, 1954.

Land Revenue Act, 1901.

Land Acquisition (Rehabilitation of Refugees) Act, 1978.

Land Reforms (Evacuee Land) Act, 1957.

Land Reforms (Supplementary) Act, 1952.

Land Tenure (Regulation of Transfer) Act, 1952.

Soil Conservation Act, 1954.

Urban Areas Zamindari Abolition and Land Reforms Act, 1957.

Reforms Act, 1957.

Zamindari Abolition and Land Reforms Act, 1950, (as amended in 1951 by U.P. Land Laws (Amendment) Act, 1971 & 1974.

Land Availability

- a) Availability of land for social forestry purposes to meet the objectives of the project is very low, specially in eastern U.P. Under different government orders same or similar wastelands are to be utilized for NREP, DRDA, IRDP and other rural development schemes. The forest department scheme gets a lower priority.
- b) As a consequence of the Land Reforms and Zamindari Abolition Acts, all revenue wasteland close to the villages have been vested in the panchayats as gram samaj lands. All social forestry schemes are, therefore, to be carried out on gram samaj lands.
- c) The only other land available with the forest department on which social forestry can be carried out are the degraded forest lands and protected forest lands (along road side and railway lines) but these come under the central preview of the Forest Conservation Act, if tree or land pattas are to be given. Strip plantations in U.P. have been declared as protected forests.
- d) Competing claims for the limited gram samaj land in eastern U.P. has brought about extensive litigation for land entitlements and use. The execution of the projects will be retarded while such litigation is on.

Tree-Tenure

- a) There is a government order to give tree tenures on gram samaj lands. Census records have been matched with land survey records and tree pattas have been "given" (dejure) to many beneficiaries. But de facto, this amounts to nothing because the census records do not reflect the actual beneficiaries and the survey records do not reveal the actual use or occupancy of land. The tree tenure scheme, operated in the present manner is therefore a failure. To make it successful it will have to be operated the other way round, from ground level to the forest department, that is, the land will first have to

be identified, the beneficiaries located and then the tree tenures given. The legal criterion for allotment will have to be strictly defined - as that in which only that is to be recognized as tree tenure where the deed papers are actually in the hands of the beneficiaries.

- b) Tree tenures in protected and reserve forests have not been given. In strip plantations (protected forests), although the rights have not been given, people are benefitting from the forest produce (illegally). In reserved forests, there are recorded concessions for usufruct rights (some areas).

Degraded Reserved Forests

In reserved forest areas the department has the power to harvest and sell timber and MFP. The centre's permission is not required for this purpose. If social forestry is to be done in degraded reserved forests, a clear government order is required which will specify the nature and amount of benefits to be given to villagers on harvesting. The existing Government letter, which says that degraded forests are to be treated at par with gram samaj land will not do because the village woodlot scheme is different. There the idea is to hand over the afforested trees to the panchayat; afforested forest lands cannot be handed over to the villages, unless the centre changes its policy. Social forestry on degraded forest lands will therefore require a different legal strategy and will have to be dealt through separate orders (no legislation is required).

Village Woodlots

Under the existing legal arrangements, the village wood lots are a one time affair. They will be felled and sold on maturity and the outcome shared by the villagers and forest departments. There is no guarantee that any sustainable regeneration will take place.

To make it a sustainable enterprise, the U.P. panchayat act will have to be amended to rearrange the finances, obligations and management. The benefit sharing rule, between panchayat

and FD (20 : 80) is arbitrary. The idea is the FD should recover its costs (80 per cent of the gross sale). This high percentage is required only if the plantation is conceived as a one time affair. In a welfare activity there is no need for the FD to recover costs. Its finances are coming from a donor agency. If costs are to be recovered it should be done over a minimum of 30 years. This will generate the interest of the FD and panchayats in the regeneration of plantations.

Farm Forestry

To encourage farm forestry and to allow for choice in species selection, the 'royalty' restriction and transit rules under the forest act will have to be amended. A rational scheme will have to be evolved to achieve the purposes of both the protection of trees in natural forests and felling of trees in farm forestry.

Advancement of farm forestry in U.P. also require amendments to the land ceiling act, the land reforms and land development acts.

Recommendations

1. To make the village woodlot a self-sustaining system, the U.P. Panchayat Act, 1947, should be amended as follow:-

(a) *In Section 28A (1) add a sub-section stating :*

'The Bhumi Prabandhak Samiti' (Gaon Sabha) shall protect and supervise the village woodlot belonging to it or vested in it under Sect. 117 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, or under any other provisions of that Act. Such village woodlots shall not be used for any purpose other than forestry.

(b) In Sec. 15(1) add. 'establishment of village woodlots';

(c) In Sec. 15(2), add. 'maintenance and control of village forests all over U.P.';

(d) In Sec. 34(1), add : 'And the funds realized from the sale or harvest of village woodlots or any coupe thereof shall vest in the Gaon Sabha.

2. The tree-tenure scheme on gram-samaj land is not recommended because such tenures are in contravention to the Panchayat Act, which directs the Panchayat to use the gram-samaj land for the common good. On such lands, only community woodlots are legally feasible.
3. NGOs, such as Yuvak Mandals, etc. should be used for managerial and facilitative works only. Land tenure, tree-tenure or contracts for benefiting from the forestry funds should not be made out in their name, specially where gram-samaj lands are concerned. Under the Panchayat Act, these lands are vested in the gaon sabha and the Act directs this Sabha to use such lands for common good. The voluntary agencies, after all, are meant to work for the social good-in this case the good of the poor villagers, and not for their own benefit. The government should, therefore, give them grants to work on such lands. The benefits should be placed at the disposal of the Gaon Sabha, who after reinvesting the requisite amount for regeneration of village forests, can use the rest of the funds for the general development purposes. As it is, numerous panchayats have gone to court against the Yuvak Mandals and other NGOs who they feel are taking away what genuinely belongs to the whole village. Such litigation is going to make the execution of any forestry scheme on gram samaj land impossible.

Restrictions on felling and transit of trees, under the Forest Act, need to be rationalized. They need to be imposed only in areas where there is good standing forest coverage on government land. In all other areas, specially far away from forests, they should not be invoked.

RAJASTHAN

Forestry in Rajasthan is governed mainly by the Rajasthan Forest Act of 1953, which is modelled on the Indian Forest Act of 1927, as is the case in most other states.

The State Forest Act does not mandate compensatory afforestation for the trees felled by the Forest Department (FD). The Act merely gives the Department the powers to sell the trees, without the corresponding duties to regenerate forests. As a consequence, over the years, the forest coverage in the state has dwindled and continues to do so due to legal and illegal felling, and encroachments. The Central Forest Conservation Act, 1980, which applies to the state, does not oblige the state to conserve forest coverage. It merely shifts the power to the Centre in matters concerning decisions about the use of forest lands.

Status

In the context of forestry in Rajasthan the following laws become relevant :

The Rajasthan Forest Act, 1953

Rajasthan Panchayat Act, 1953

Rajasthan Land Tax Act, 1985

Rajasthan Tenancy Act, 1955

Rajasthan Land Revenue Act, 1955

The relevant sections of all these laws will have to be amended, since they come in the way of the forestry projects.

- (a) Social aspects of forestry in terms of benefit-sharing, contractual arrangements, and regulations and tenure are comparatively under-developed. Little effort has been made to bring about any change, despite the new notifications.
- (b) Forestry is not equated with agriculture for taxation purposes. Hence there is heavy tax on farm forestry (50 per cent).

- (c) Procedures for felling, marketing, tenure, patta and transit are very complex under the law. They deter private forestry and tree-tenure schemes.
- (d) Sections of the following laws are main obstacles to people's participation :
 - (i) The Rajasthan Forest Act (ii) Rajasthan Land Tax Act (iii) Rajasthan Tenancy Act (iv) Rajasthan Land Revenue Act (v) Rajasthan Land Ceiling Act (vi) Rajasthan Panchayat Act (vii) Rules made under the these Acts.
- (e) Legal Arrangements for sustainable village forests are not available.

Overview

In Rajasthan the social aspect of forestry is comparatively still under-developed both in terms of benefit sharing with the people and their involvement in the afforestation programmes. One major reason for this is the numerous legal obstacles which come in the way of almost all models of social forestry. Both the GOR and GOI realize this but very little has been done so far to bring about any effective change. Major legal hurdles which come in the way of people's participation in forestry are discussed here.

Observations : Farm Forestry

Under the Rajasthan Land Tax Act, 1985, (Relevant Sects. : 2(a) (ii), (f), (g), (I) (ii) (iii) etc.) a Wealth Tax of 50% has been imposed on the total annual sale price for private farmers; and 2% for industrial or commercial purposes.

(NB : Agricultural income is non-taxable for private farmers).

Remarks

This amounts to telling the farmers to keep off farm forestry, and encouraging only industrial houses to carry on commercial forestry. Forestry, like agriculture, needs to be exempted from income tax if it is to be encouraged.

Observations Regulations on Felling and Transit

According to the Rajasthan Tenancy Act, 1955, (relevant Sections : 83-86):

Felling of all trees on private land is prohibited without the permission of the revenue officers - Patwari SDO or Collector. Depending on the number of trees Sec. 86 of this Act lays down heavy penalties for felling trees without permission.

See also Rules laid down under this Act, which provide for licence for felling, fees, forms etc:

Notifications : No : F-1 (37) Rev.8/55 of Nov. 1.1995

No : F.5(7) Rev. Gr.4/76/13 of May 2.1981

No. : F.6(23) Rev Gr.IV/79/60 of Sept. 2.1986

Private forest growth on estates is further regulated by the Rajasthan Land Revenue Act, 1955 (relevant section : 94), which gives the Collector the power to levy penalties for felling without permission, etc. (see also : Rule : No. F.15(85) Rev. A/57 of 24/5/86, under the Act).

Restrictions on felling of all trees are laid down by Rajasthan Tenancy Act, 1955 (Sec. 74-86) (on private lands). On government lands the restrictions are laid down in the Rajasthan Forest Act. Special Govt. orders are required to fell, even in Reserved Degraded Forests.

Remarks

The intention of these Acts and rules was to preserve and protect forests, but they get in the way of people's participation in forestry. A rationalization of these Acts and rules is required to distinguish between natural standing forests on private lands and plantations on common or government lands. Extensive liberalisation is required if farm forestry is to be encouraged.

Observations : Village Woodlots

No specific government order has been passed for management of forests on panchayat land, but the forest secretary has laid down a general guideline for social forestry.

which includes community woodlots. Management for 5 years by the FD and benefit sharing are laid down in these guidelines, but the exact rules have not been framed as yet. The FD is exploring various models for arrangement with the Panchayat.

The major problem, however, is that the panchayati system does not legally provide for village forest management. The Rajasthan Panchayat Act will have to be amended to :

- (a) define forestry as part of the developmental activities;
- (b) rearrange the panchayat finance for afforestation;
- (c) put an obligation on the panchayats to carry out afforestation work; and
- (d) allow for rural credit and banking arrangements for afforestation.

Without these amendments, sustainability of community woodlots is questionable.

Observations : Tree-Tenure

Tree-patta is provided for through Notification No.:F6(15)R Rev/Gr.IV/86/41. dated 6.6.1986 issued by the Revenue Dept. The "alloted" land is usually found to be encroached. The legal procedure for registration of land on which tree pattas are to be given is also very complex. This discourages both the beneficiary and the FD. There are also restrictions on felling and transit, besides the 50% tax on sale of trees. All these, combined, make the tree-tenure scheme impractical. The difficulties can be overcome by amending the appropriate rules and redefining the Revenue Department's task in allotments.

Observations : Strip Plantations

Vide Revenue Deptt notifications No. F.3(16)Rev. 8/76 dated Aug./5/1978, many road-side and railway strips have been declared as 'protected forests' in Rajasthan. Giving usufruct rights in protected areas is legally problematic, but not impossible. No usufruct right has been officially given so far.

Such rights can be given on strips, without infringing on the Forest Conservation Act.

Observation : Social Forestry in Reserved FD lands

Use of FD land by non-FD individuals or organisations is restricted by the Forest Conservation Act, 1980. Unless the centre gives permission to the State FD to allow voluntary or private organisations to afforest and harvest such lands, social forestry is not possible. The State FD, on its own, can, however, share the benefits from RDFs with the local people. Such benefit sharing is possible only through specific govt. order for RDFs (specific areas).

On June 1, 1990 the Central Ministry of Environment issued a circular to the Forest Secretaries of all States ordering the implementation of Joint Forestry Management (JFM) programmes, involving village communities and voluntary agencies (No. 6-21/89-F.P.)

In pursuance of this circular the GOR issued a notification (dt. 16.3.91 No.:F-7(39)/Forest/90), for participation of villages and voluntary organisations in regeneration of degraded and denuded forests lands. Meanwhile, there has been strong opposition from the State against the provisions of the Forest Conservation Act and the new sections to the Environment Protection Act, since they get in the way of mining activities in the States.

Recommendations

1. Taxation

Section 2(a) (ii), (f), (g), (I), (ii) (iii) of the Rajasthan Land Tax Act, 1985, needs to be amended to exempt trees grown on private land from taxation. If agroforestry is to be encouraged, trees need to be equated with crops and made free of income or wealth tax.

2. Rules concerning felling of trees need to be rationalized, keeping in view the modern needs. This means keeping restrictions where there is genuine forest coverage in reserved and protected forest. and

liberalising such restrictions in all other areas, especially those which are far from standing government forests.

Section 74-86 of the Rajasthan Tenancy Act, 1955 and Sec. 94 of the Rajasthan Land Revenue Act, 1955, need to be amended for this purpose.

3. (a) Village Woodlots

Section 24 of the Rajasthan Panchayat Act, 1953, needs to be amended to put an obligation on the Panchayats to maintain village forests.

Section 64(a) of the same Act needs to be altered to include forest plantations as crops.

Chapter 5 of the Act needs to be amended to allow the Panchayats to take loans from Banks for plantation, marketing and harvesting. Also to make sure that the requisite amount of funds gained from such sales is kept aside for reinvesting in village forestry works. This chapter must also rearrange the finances in such a way that the benefits from the village forests go to the village concerned, even if the administration is done at the panchayat level.

These changes in the law are necessary if a self-sustained village woodlot is to be created. The present legal model creates dependency of the panchayats on the FD for plantation, maintenance and harvesting. This is a one time project work where the FD plants and harvests on panchayat land without transferring techniques of forestry or management. What is envisioned under the project is the creation of long term, self-sustaining village woodlots, where the initial seed funds from the project are intended to meet the initial capital manpower and expertise costs only. Given that under the present panchayat laws they are not obliged to use the land for forestry nor manage manpower or finances, there is little likelihood that the projects will be self-sustaining.

3. (b) Revenue Lands contiguous with villages, specially where afforestation has been done under projects, should be vested in the panchayats at the earliest by the Revenue Department. If this is not done the legal status of such

'community woodlots' will remain nebulous, and the benefit-sharing arrangement that the FD has on regular panchayat lands will not apply to these village woodlots. As such, one of the objectives of the social forestry project will be defeated.

4. Tree-Tenure

The Tree-Tenure scheme is socially one of the most beneficial schemes for the landless poor if implemented properly. No steps have been taken in Rajasthan to draw up an appropriate legal model and administrative strategy. Infact the strategy adopted makes it a failure from the very beginning. As noted earlier, proper land identification and allotment is not done, the procedure for registration is complex, the trees are taxed, there are restrictions on felling and the beneficiaries are not properly identified. Under these circumstances the Forest Department's claim that they are not being successful in executing this component of the project is not surprising. In any development project it is always easier to help the economically better off, and a lot more labour has to be put into helping the poor. The question concerning the tree-tenure scheme is: is the government willing to put in the labour required to help the landless and marginal farmers for whom the scheme has been planned? If there is indeed a willingness then the following steps are required to execute a legal model:

- (a) 'Revenue Department' must identify the available land, not merely on record but by actual verification of the records.
- (b) The beneficiaries, who have been identified by the Rural Development Department for other projects or schemes, can be allotted tree-tenure by the Revenue Department.
- (c) The allotments must be done on revenue lands, and not on common village lands on which people already have settled or customary rights.
- (d) The Revenue Department must exempt the tree-tenure holders from the provisions of the Rajasthan Land Tax Act, the Rajasthan Tenancy Act and the Rajasthan Land Revenue Act, with reference to the relevant sections of

these Acts which apply to social forestry. In brief, the tree-tenure holders should not be required to register. A certificate of registration should be issued to them by the Department. They should not be taxed for the trees. These exemptions and administrative steps can be arranged through a departmental notification.

- (e) After the above five steps have been completed the Revenue Department should ask the Forest Department to execute the tree-tenure scheme.
- (f) The Forest Department should plant only those tree-species which are indigenous and which have long term as well as short-term benefits to the lease holder. The preferences of the lease holder must also be considered.
- (g) There needs to be mobilisation of the NGOs for participation in JFM.

Chapter Seven

LEGAL APPRAISAL OF FORESTRY IN TAMIL NADU

Legal policy Recommendations For Tamil Nadu.

Forestry, like agriculture is a resource and asset generating activity. With the advent of social forestry a new vista has opened up for rural development, both in terms of employment and capital wealth generation in rural areas. The governments are well aware of this and have consequently taken up afforestation on a large scale not only through the Forest Department but also through the Rural Development and Revenue departments. However, in terms of the investments put into afforestation and benefit sharing, not much has really reached the rural people. A large part of the benefits from forestry still accrue to the urban rich. Part of the reason for this is the manner in which the laws regulate the usufruct rights, plantations, land availability, marketing and harvesting possibilities. The laws and rules need to be appropriately amended to achieve the proclaimed aims of social forestry. In what follows, in light of this study and the lessons learnt from the field work, the required amendments are discussed.

In Tamil Nadu, forestry is governed by the Madras Forest Act of 1882. This act has a long history, including the fact that it overrides the Central Indian Forests Act of 1927, in case of conflict. This is vide the Madras Forest (Validation) Act of 1882, sustained by Government Order of 1950, which states that no pre-Constitutional Central Act has any effect on the Madras Forest Act. This implies that although the Indian Forest Act, 1927 does not affect the Madras Act, the Forest Conservation Act, 1980 does.

Social forestry in Tamil Nadu, however, is sustained not by the Madras Forest Act, but by government orders passed from time to time. These orders have been issued by the Forest Department and the Rural Development Department. To understand the overall forest policy in Tamil Nadu, therefore,

one has to look not only at the social forestry programmes but also those carried out under the Madras Forest Act.

Under the Madras Forest Act the total revenue earned by the Tamil Nadu government in 1985-86 is Rs.27.73 crores though the same year Rs.10,55,039 was collected as fines by the Detective Flying Squads. The Government has given 73.220 ha of land on lease to the Forest Plantation Corporation, whose paid up capital in 1986 (which has been totally subscribed by the Government) is Rs. 72.06 lakhs. Through the Sandalwood Products Factory the Government earned about Rs.6.26 crores. The Lac Factory at Madurai had a budgetted turnover of Rs. 60 lakhs and an anticipated profit of Rs.11.50 lakhs. Taking all these profits together the annual turnover from forestry comes out to be Rs.34,82,760,39; it is almost about thirty five crores. The expenditure on forestry for the same period, according to the Forest Department, was Rs.30.15 crores. This still leaves a margin of about rupees five crores as benefit for the Tamil Nadu government.

Let us now take a look at the economics of social forestry, not under the Forest Act, but through government orders. According to the information from the Tamil Nadu Forest Department the following is the statement showing payment of 50 per cent of sale proceeds to panchayats from April 1981 to July 1985.

TABLE
Statement showing payment of 50% share of
sale proceeds to Panchayats after 1.4.1981.

Sl. No.	Name of district.	Amount paid to panchayats	Number of panchayats benefited.
1.	Salem	1,565,076	60
2.	Periyer	—	—
3.	Coimbatore	135,399	2
4.	Nilgiris	127,046	1
5.	Tiruchirapalli	1,253,405	44
6.	Madurai	1,010,721	80
7.	Thanjavur	..	..
8.	Pudukottai	..	..
9.	Ramanathapuram	904,368	10
10.	Chengalpattu	..	..
11.	North Arcot	..	..
12.	South Arcot	527,933	23
13.	Dharapuri	1,619,339	36
14.	Tirunelveli	654,056	85
15.	Kanyakumari	...	...
Total		7,797,343	341

Source: Paper presented by J.Wilson, ACCF(SF) Tamil Nadu, at Community Forestry

A sum of Rs.7,797,343 was distributed to 341 panchayats over a period of about 4 years. This averages out to giving Rs.5716.53 to each panchayat annually. The fact that the revenue earned by the Tamil Nadu Government is about rupees 5 crores and that by the panchayats 5 thousand clearly shows that the forest policy followed by the Tamil Nadu government is one of state capitalism, where the major beneficiaries of the resources are the urban rich, and not one of socialism as advocated in the Constitution. Infact this whole policy is in total contradiction to Articles 39(b) and (c) of the Constitution which directs the states to share the natural resources equitably and for the common benefit of all urban and rural people.

The Madras Forest Act was enacted in an era of colonialism. Unless drastically changed, it cannot serve the Constitutional purposes; and if not changed it will continue to serve the interest of the ruling class. In what ways does it need to be changed?

The field data shows that there is very little land with the panchayats. The availability of land for giving patas is also very little. On the other hand, the state has given 73,220 ha to the Forest Corporation; 2,748 ha to the Tea Plantation Corporation; 4785.7 ha to Arasu Rubber Corporation; and a number of other smaller industries. The benefits from these plantations do not go to the rural and tribal people. If poverty alleviation has to be really brought about, benefits and natural resources shared, the Forest Act must be amended to rationalize land allotment. Preference must be given to the panchayats and rural based forest cooperatives. It must be remembered that the land available with the Forest Department is, after all, the land belonging to various villages which the British usurped, one by one, by passing notifications and 'reserving' the land.

A rationalized scheme of land distribution must appraise the land availability and the land needs to various villages. Villages not having any grazing or forest land must be allotted land on a priority basis. Under Section 33 of the Madras Forest

Act, the government can enter into a joint management plan for forestry with the village or forest co-operatives; this section of the Act has rarely been used by the state. Using this section, the government can allot forest land to a group of individuals or cooperatives, wherever possible, and give them appropriate usufruct rights to share the benefits. Unless the panchayats and the forest cooperatives are allotted land in the same proportion as the industries or corporations, equity and efficiency in development cannot be achieved.

One reason why the government may have apprehensions about giving land or forests to the panchayats is its experience in the sixties - when the village forests which were allotted to the panchayats were subsequently destroyed. What in fact happened was, given the economic and legal resources of the panchayats, they could not sustain the forests. The middle men (contractors) came in and bought the forests off from the panchayats, in a manner in which the village people benefitted little and the urban rich (including the contractors) a lot. Given that the government's aim, under the 20 point programme and other rural development programmes is to remove poverty at the lower levels, merely depriving the panchayats of the gains of forestry due to their earlier failures will not do. It must look at the cause. Why were the panchayats unable to sustain the forests? Why did they benefit so little in the trade-off? One major cause lies inherent in the Madras Panchayats Act, 1958, which gives unilateral rights to the panchayats, vis-a-vis forests, without any corresponding duties to carry out plantation or maintenance of forests. The point of vesting the village common lands in the Panchayats is not merely allowing them the possession of such lands, but to allow them to benefit from the use of such land. Since forestry before the sixties was done by outsiders and the forests just handed over to the panchayats, and since the panchayats had no duty to maintain the forests, they had very little attachment or obligations to these forests. If the afforestation had been done by themselves they would not have been so careless, to allow the contractors and the sub-contractors to take away the trees. The Madras Panchayat Act needs to be amended so that the panchayats

have rights as well as duties to maintain the forests on the land vested in them for this purpose. A recent government decision suggests that 20 per cent of the benefits are to be reallocated into forestry. This is recommendable but the arbitrary cut-off point of 20 per cent needs to be rationalized. The reinvestment can be the total amount actually required, instead of the 20 per cent. Since the margin of benefit in forestry is very large, to regulate the benefits and investments the sections concerning funds and panchayat revenue will also have to be amended. As the law stands, the revenue earned from forestry goes into the general fund of the panchayat, which it can use for other purposes. The relevant sections of the Madras Panchayat Act are discussed in the Appendix.

The Village Forest committees formed on the basis of executive orders do not have a statutory standing. The ambiguous legal status of such Committees can become problematic when larger funds are involved; or for the purposes of rural credits, loans, etc. It is, therefore, better to constitute the Village Forest Committees as Village Forest Panchayats, on the authority of the Panchayat Act, rather than through mere orders. The Forest Panchayats can be an additional wing of the panchayats (together with Gram Sabha and Nyaya panchayats). Forming the Forest Panchayats in this manner does not require an additional enactment (as is the case in Uttar Pradesh). It can be done on the basis of the existing Panchayat Act. The necessary amendments to this end will be required in the Act.

One major problem with rural forestry is lack of economic resources for the panchayats, patta holders and forestry cooperatives, to allow them to carry on forestry on their own. Giving 2-C pattas to the rural individuals or groups is not enough. The field studies reveal that the land-less, marginal and underprivileged Harijan farmers cannot sustain forests on their own without substantial state help. The wages provided to such people are not enough to enthruse them to protect or maintain forests.

In light of the fact that the government grants substantial amount of funds to the corporations and subsidises the industries, but puts comparatively very little funds at the disposal of the panchayats, patta holders and rural agencies, it is evident that the government is more interested in helping the corporations and the industries than the rural people. This is contrary to the avowed policies as well as the Constitutional directives. The corporations and industries can raise funds on their own from the public. Hence there is little justification for putting the people's tax-money at the disposal of the industries. The reason why the people need a state (or a government) is because they want to make sure that their interest against bigger factions and lobbies is protected. If the state itself begins to help the economically bigger factions and lobbies, the very reason for having representatives in the government is nullified. To make adequate funds available to the rural people, the rural credit laws, laws concerning cooperatives and the panchayats need to be amended in some significant ways. It is not possible to discuss rural credits and cooperatives in much detail here. However, some important facts can be noted. (These issues are so significant that they have been dealt separately in detail. See: Chhatrapati Singh, Vijay Kumar, *'Panchayats, Forestry and the law'*, and Chhatrapati Singh, P.M. Bakshi, *Forest Cooperatives and the Law*; reports submitted to the National Wasteland Development Board, 1986).

The Panchayats carry out their activities largely with the funds they internally raise. Some limited state revenue is available to them for carrying out development works. Once the Forest Panchayats are formed by amending the Panchayats Act, the state can allocate some funds directly to them for the purposes of forestry. The rural credits and loans, through NABARD and Cooperative banks, are aimed mainly at improving agriculture and animal husbandry. Loans or credits for forestry have not been a major focus of such banks. The Rural Development officer can work out plans for patta holders so that they can come together as cooperatives and avail the loans obtained by other cooperatives.

The issues discussed so far concern major legal policy matters. We shall turn now to some specific minor issues of law, which, although minor, are significant from the point of view of forestry. These pertain to the rules and regulations framed under the Madras Forest Act.

- i) The first issue concerns restrictions on felling of trees. One reason why private land owners or patta holders are reluctant to grow trees is that at the time of harvesting they have to get permission from the authorities concerned to fell and sell the trees. This goes against the usufruct rights of patta holders otherwise granted through official notifications. The reason for putting restrictions on felling of trees owned privately was two-fold-first the colonial government wanted to have a monopoly over such natural resources, and second, there was genuine danger of illegal felling in areas close to government forests. The second reason is still valid, but the first needs to be rejected now. There should be no restriction on felling and marketing of trees or their produce growing on private lands in areas reasonably away from government forests. The existing restrictions, imposed under land revenue laws, forest laws, forests produce nationalisation laws and laws pertaining to State Monopoly on Trade of Forest Produce, should be totally repealed. With reference to Tamil Nadu, Sections 40-G to 40-W of the Madras Forest Act require special security in this respect. A distinction should be made between 'royalty' trees in proximity to government forest lands with trees coverage. In private lands, the 'royalty' rules should just not apply if forestry is to be encouraged amongst the people.

In areas close to government forest land with tree coverage, a distinction can be made in terms of species. On species not growing in the forest no restrictions for felling and marketing need be imposed.

- ii) Sections 35 to 36-E of the Madras Forest Act, similarly puts severe restrictions on the transit of timber. This, again, acts as a disincentive for forestry by the people. The rules here need to be rationalized. Restriction on transit of timber makes sense in and around government forest areas. But a general ban all over the state is senseless. Strict monitoring of wood in transit needs to be done only when the timber is coming out of reserved or protected forests. Private forest owners can make their own arrangements for restricting illegal felling.
- iii) Unlike agricultural produce, standing trees on private land are subject to Wealth tax. If forestry is to be encouraged, there should be a general exemption from Wealth tax in respect to the value of the trees on private land, or on land given on patta to individuals for purposes of forestry.
- iv) The Gujarat land laws exempt cooperatives from the provisions of land ceiling laws. This is necessary if land is to be consolidated for forestry by cooperatives of patta holders in Tamil Nadu. A similar amendment of the Ceiling Act in Tamil Nadu will be necessary.
- v) Since trees become immoveable property assets, farmers should be permitted to mortgage standing trees against bank credits, for purposes of agriculture or animal husbandry.
- vi) The patta holders and other tree growers of the backward communities do not have enough know-how for marketing timber or minor forest produce. The Madras Forest Act needs to be amended to allow the Forest Department to guarantee floor price to trees grown by them. The Department could also provide other types of marketing support, such as market research and advertisement.

In conclusion, it must be emphasized that this legal policy recommendation envisions a different type of role for the state, if forests are to really grow in India once again and people's

involvement is to be really sought for the enrichment of the people, not their further impoverishment. To regenerate the forests, the state will need the people's help, since forestry like agriculture, is labour intensive. In this regeneration it can buy people's labour cheap, through the rural development programmes, sell the benefits of this labour to the industries and further impoverish the people. Or it can actually benefit the people and alleviate their poverty. Some of the ways this can be done have been noted here.

Summary of legal recommendations

(1) Forest Acts

- (i) The Indian Forest Act 1927 and state forest Acts, based on this Act, embody a policy which is totally incompatible with the social forestry policy. Afforestation programmes by the people are not possible as long as the 1927 Act and rules framed under it continue to be operative.
- (ii) The 1927 Act contradicts articles 14, 19(c), 21 and 39(b) and (c) of the Indian Constitution in many ways. The mandate of article 13 which demands invalidating all acts violative of fundamental rights - therefore, directly applies to Act.
- (iii) Although sections 38K and 8L of the 1927 Act allow government to jointly manage forests, there is no scope in the Act to allow people to manage forests on government land.
- (iv) Far too many amendments are required in the existing forest Acts to meet new demands of forestry. It is, therefore, recommended that Parliament should repeal the 1927 Act and enact a new one, which will be in keeping with the new forest policy.

- (v) The new forest Act, both central and state, would be enacted especially with the following points in view:
 - (a) To rationalise planting and felling of trees on private land, away from government forests, removing all restraints where necessary.
 - (b) To rationalise transit rules where necessary, especially in areas away from forests.
 - (c) To permit rationalisation of land allotments, such as, leasing out denuded forest lands to private individuals or groups.
 - (d) To allow forest department to guarantee floor prices to patta holders.
 - (e) To make it mandatory to give usufruct rights-for harvesting/marketing - of a type which brings maximum benefit to patta holders.
- (vi) In the light of this the scope and limits of the Forest Conservation Act 1980 need to be appropriately defined. Rules framed under the Act should be of a type which do not get in the way of allotting land for 'forestry' purpose. The purpose has been partly defined in case laws but still needs to be given more attention in framing of rules.

(2) Fiscal Law

- (i) Amendment in rural credit laws

Rural credit laws of different states should be amended to cover forest cooperatives and panchayats in respect of credit facilities.
- (ii) Amendment in National Bank for Agriculture and Rural Development Act 1981.
 - (a) The Act needs to be amended to become the National Bank for Agriculture, Forestry and Rural Development Act.
 - (b) The Act should be amended to make loans available directly to village people and panchayats.

(iii) Amendment in bank loan laws

- (a) Bank loan laws of different states need to be suitably amended to allow marginal and landless farmers to obtain loans for forestry purposes.
- (b) These laws should be amended so as to permit farmers to mortgage standing trees against bank credits for purposes of agriculture or animal husbandry.

(iv) Amendment in Panchayat Acts

- (a) Panchayat Acts of different states should be amended to specify that revenue earned from forests must be allocated for regenerating the amount of forest cut down; only surplus revenue can be utilized for other purposes. The revenue must be allocated at the forest panchayat level and not at the zila parishad or district level. Forest panchayats of Uttar Pradesh can serve as a model, but some changes are required here too.
- (b) Various sections of the Panchayat Act in Tamil Nadu concerning funds and panchayat revenue should be amended to regulate the benefits and investments.

(v) Exemption from wealth tax

Value of trees on private land or on land given on patta to individuals for purposes of forestry should be exempted from wealth tax.

(3) Leasing and contracting

- (i) Forest Acts should be amended to provide for leasing out denuded forest land on a long term (perpetual) basis for purposes of forestry.
- (ii) Separate type of VFCs and patta rules should be drafted for tribal areas, such as Chotanagpur area in keeping with the Chotanagpur Tenancy Act and Khatian Part II.

Forestry programmes in general, should make a distinction between tribal and non-tribal areas. Since in tribal areas there

are already recorded usufruct rights, general state notifications for land or patta allotments will not do. Separate orders are required for tribal areas.

- (iii) The State Governments should consider the issues of marketing and harvesting, usufruct rights and formation of cooperatives of patta holders or of villagers in a joint management plan while drafting necessary notifications for VFCs and pattas. The same strategy can be tried in other states.
- (iv) Proper deed and allotment papers should be issued to people to actually guarantee them the rights.
- (v) Government orders concerning pattas should spell out marketing and harvesting rights in order to facilitate certain activities by individual farmers or cooperatives such as taking loans.

(4) People's participation

- (i) Acquisition of denuded forest lands.

Denuded forest lands should be acquired from the forest departments under the land utilization Acts or land development Acts and be vested in panchayats, forest cooperatives, village forest committees, educational institutions and NGOs.

- (ii) Vesting of common lands in panchayats.

Panchayat Acts and forest Acts should be amended so as to vest common lands in panchayats for forestry and to give people total beneficiary rights over them.

- (iii) Forest panchayats

- (a) Instead of forming VFCs on the basis of government orders, Panchayat Acts of various states should provide for forest panchayats which should look after common property, specially forests. The Acts should be amended, where necessary.
- (b) Amendments to Panchayat Acts should also provide for the duty of panchayats to maintain

forests and to be legally accountable for their negligence.

(iv) Forest cooperatives

Besides forest panchayats, village people should also be involved in forestry through forest cooperatives. Ceiling Acts of various states should be amended to exempt cooperatives as is the case in Gujarat.

(v) Non-government organisations (NGOs)

- (a) Leasing, contracting and tenure rights should be drastically altered for facilitating NGOs' participation in forestry.
- (b) NGOs should be provided funds to start a legal information and consultancy resource centre.
- (c) Some institutions should also start 'environmental law' training courses.
- (d) Laws allowing involvement of local people and NGOs in decision making processes should be publicised.
- (e) NGOs should utilise sections 38K and 80 of the 1927 Act for forestry on "forest land" for joint management plans.
- (f) NGOs should also assert local rights over common lands.
- (g) Laws restricting and regulating NGOs are far too many. It is necessary to simplify procedures to facilitate their democratic and legally bonafide activities.

(5) Administrative set up

(i) Inter-departmental coordination

The study makes it obvious that inter departmental coordination is essential, if more than one government departments are to be involved in forestry. Either an apex body must oversee and coordinate the work among various departments, or forestry programmes

should be carried out by one single department. This is necessary in view of conflicting official notices issued concerning patta rules, allotment of land and distribution of funds.

(ii) Land identification

A separate task force should be set up within each state for identification of wastelands, for afforestation and patta allotment purposes. This task can be better handled by non-government bodies (on an assignment or consultancy basis) provided they are given appropriate authority to collect data from various government departments.

(iii) Programme logistics

The studies make it clear that both economically and legally, forestry programmes under Integral Rural Development Programme and National Rural Employment Programme are untenable. Forestry should not be carried out as a rural 'development' programme. First, legally such programmes violate many International Labour Laws and Indian legal provisions concerning employment and wages. Secondly, such programmes involve investment of people's tax money in a manner in which rural people benefit little through wages and the maximum benefit goes to those who harvest trees.

Legal Provisions to Be Reconsidered

Relevant provisions of the Tamil Nadu Panchayat Act 1953

The Tamil Nadu Panchayats Act, 1958 (Act 85 of 1958) was enacted to "make better provision for the organisation of village and town panchayats and for the constitution of panchayat union-council". The act, while detailing the constitution, mode of election, procedure, function, powers and property, taxation and finance, authorities and other relevant (related) matters, deals with the role of panchayats in land development and control.

The panchayats are therein authorised to determine the use to which land in their control is to be put, and to implement, or authorise the implementation of programmes in this connection. S.82(1) (e) provides that no person shall plant any tree on any public road or other property vesting or belonging to a panchayat or a panchayat union council, and S.82(1) (f) provides that no tree may be felled, removed, destroyed, lopped, stripped of its bark, leaves or fruits or otherwise damaged on any land whose use is regulated by the panchayat.

S.82(e) states that the Karnam of a village is to report on encroachment to the revenue department and that it shall be the duty of the executive authority or commissioner concerned to remove the encroachments. In case the encroachment is not removed within the period specified in the order made for the purpose, proceedings under the Tamil Nadu Land Encroachment Act 1905 (Act 3 of 1905) may be instituted.

S.135(xiv) appropriates to the Panchayat Union (General) fund the sale-proceeds of trees and avenue produce appertaining to panchayat union while S.135(xviii) credits to the receipt of the same fund, income from sale proceeds of the buildings, lands and other property belonging to the panchayat union council.

Receipts which shall be credited to the town panchayat and village panchayat fund shall include all income derived from porambokes the use of which is vested in the panchayat (s.137 (xvii)).

S.175 provides that all roads, markets, wells, tanks, reservoirs and waterways vested in or maintained by a panchayat or a panchayat union council shall be open to the use and enjoyment of all persons, irrespective of their castes and creed.

S.72(1) (a)- All unreserved forests in the village at the commencement of the Act vest in the panchayat and shall be administered by it for the benefit of the village. The panchayat shall, if required by the collector, pay to the government such rent as the collector may, subject to the control of the Board of Revenue, fix from time to time. The Revenue Divisional Officer

has been vested with the discretion of withdrawing the unreserved forest from the panchayat, and may vest it in the panchayat union council, if he is of the opinion that the panchayat is not administering the forest properly.

S.86 deals only with ryotwari tracts. Certain porambokes (eg. threshing floors, grazing rounds) are declared to vest in the panchayat, and the panchayat to have power, subject to prescribed restrictions & controls to regulate their use; provided the porambokes are at the disposal of the government. This is subject to change at the instance of the Collector, upon consultation with the panchayat. The government may authorise the use of any other porambokes to be regulated by the panchayat. S.86(8) specifically furnished to the panchayat the right to plant trees on any such poramboke as is within the power of the panchayat to regulate, subject to prescribed restrictions and control.

S.87 provides to panchayats the right to regulate the use of estates under the Tamil Nadu Estates Land Act, 1908 which are set apart for certain purposes specified in the 1908 Act for the common use of the inhabitants of such village or towns; to reclassify this land based on the change in the use of the land subject to the sanction of the District Collector, and to plant trees on any land the use of which is regulated by the panchayat under clause(a)- analysis of the provisions: The two factors that are apparent even as one reads these provisions are the communal nature of village land and the revenue bias. To take them up one at a time:

Commonality of village land: Porambokes includes land which belongs to the community as a whole as opposed to patta land which is in the ownership of individuals or specific legal entries (trusts etc.). Poramboke land may be used for a variety of purposes (Supra); its one link of similarity is that it is always for common purposes of the villagers. For example : a grazing poramboke is for the use of all persons in the village to graze their cattle, sheep and goat. The nature of the porambokes in one village may differ from that in another village depending on the use which the community wishes to put it to.

Poramboke land is to be used by the panchayat for the benefit of the village. The vesting upon declaration by the government u/S.83 is of communal property or income. The income from the sale-proceeds of trees and avenue produce alongside panchayat Union (General) Fund which is to be used towards programmes related to the panchayat as a whole. Again, all income from poramboke land is appropriated to the town and village panchayat fund to be used for improvements and progress of a nature relating to the community as a whole.

Revenue bias of the legislation : The officers' who have been empowered to determine matters like reclassification of poramboke land (Dt. Collector) and on issues of encroachment (karnam to report to revenue department) highlights the relationship that has been established over the years between panchayat controlled land and its revenue-yielding nature.

A rent may be payable to the government for the unreserved forests vesting in the panchayat. Such rent is to be fixed by the Collector subject to the control of the Board of Revenue. The Revenue Divisional Officer is vested with the discretion to withdraw the non-reserved forests from the panchayat if he is of the opinion that the panchayat is not administering such forests properly.

For a while-between 1970 and 1985 - there were no elected panchayats in Tamil Nadu, and the BDO and DRDA filled the vacuum created by their absence. This meant that the bureaucracy was performing the tasks of elected village and town representatives. Elections have, however, been held this year, and the panchayats have taken up their respective roles.

Patta Passbook Act, 1983 (Act 4 of 1986)

This Act now gives to every patta holder a passbook in which the details of the survey numbers of which he is the patta holder are given. He can therefore now use the patta passbook as security, or as a document of his right over the various survey numbers mentioned therein. This also provides a consolidated record of all the transactions - including transfer affected by buying, selling, gift etc. involving the survey numbers in question and furnishes a record of the ownership status of land.

Chapter Eight

AN ANALYSIS OF FORESTRY WORK IN WESTERN GHATS IN KARNATAKA

Karnataka Western Ghats Forestry Projects A Legal Appraisal

Introduction

The Government of Karnataka through its Forest Department, plans to protect the evergreen and deciduous forests and regenerate the degraded lands of the Western Ghats. To achieve these ends the Department prepared and presented to the government an Integrated Western Ghats Development Project in 1988, which has been further refined and developed in 1989 and 1990, in collaboration with the Overseas Development Administration. This Report is an appraisal of the 1990 Project Proposal on Western Ghats. It critically analyses the legal framework that will be involved in this work. The framework is of crucial significance because the objectives of the project cannot be achieved if the law obstructs or makes the achievement of such goals impossible. The law sets the stage for action and defines what is permitted and prohibited in terms of management, resource utilisation, organisational set-up, administration and benefit sharing. Keeping in mind that most of the laws operative today were enacted during a period when conservation and regeneration were not the major concerns, and also when involvement of people for afforestation work was a matter of lesser significance, appraisal of the legal framework becomes all the more crucial.

Scope of Study

Any large resource based project attracts a number of laws. On the resource side it involves forests, land and water laws (both concerning private and public holdings). From the side of the people it attracts laws concerning organisations, such as

panchayats, cooperatives and societies, as well as laws concerning their statutory and customary tenural and usufruct rights. Moreover, from the side of management a number of state and central laws directly relate to various managerial and administrative issues, such as nature of contracts (for benefit sharing), size of holdings (ceilings), regulation of species, transit, harvesting and marketing rules, regulations on land use, wildlife conservation, etc.

A comprehensive legal study must critically appraise, both analytically and through field studies, the complete network of the above mentioned laws. This Report takes up only one crucial issue for analysis and study from amongst these various aspects, namely, the legal framework concerning people's involvement in afforestation and protection of forests.

In the last two decades the most significant change in forestry work in India has been the realisation that protection of forests and regeneration of land cannot be done without active participation of the people. This aspect, therefore, becomes one of the primary issues which must take priority in any legal analysis. The realisation about the significance and necessity of people's involvement in forestry work is more than evident in the project proposal prepared by the Karnataka Forest Department. The proposal mentions "link organisations", 'Joint management', forest committees, panchayats and other people's associations that must be involved in the project. However, as far as the nature and legal status of such associations is concerned, not much thought seems to have been given to the matter. The proposal is also somewhat elusive on the nature of benefit sharing and contracts with the people. Since people's involvement is a must for the success of the project and this involvement cannot be sustained if the legal arrangements are loose or vague, it becomes a matter of utmost urgency to critically examine these basic legal issues concerning joint management and the legal modalities of people's involvement in afforestation and protection. This appraisal report limits itself to this basic task of examining the issues and suggesting the legal alternatives that are available for the project.

Presentation And Methodology

In what follows the analysis and discussions are presented in three sections. Section -I outlines the basic strategy that the Karnataka Government plans to adopt. Section-II describes the alternatives tried, or rejected in forestry work in Karnataka earlier, as well as the alternatives the government is considering at present. Section-III presents the critique and recommends the alternatives.

This analysis is based on critical studies of the land and forest laws of Karnataka, detailed discussions with the forest officials involved in the project and lessons learnt from various field visits to other forestry projects in Karnataka earlier.

Appraisal of The Project

Section-I

Work Strategy and the Relevant Legal Framework

The Karnataka Government plans to divide the forest area into 5 zones for operational purposes. In terms of legal land classification the zones are as follows:

Zone-I : Reserved forests where all customary rights have been abolished, except for easementary rights (right of way, pasture and water).

Zone-II: Protected forests where customary rights exist along with concessions given by the Forest Department.

Zone-III: Protected Forests along with village forests acquired by the Department and other areas transferred by the Revenue Department.

Zone-IV: Protected forests and minor forests, where the Department has statutory responsibilities, along with surplus and ceiling lands. People have both customary and statutory rights in these forests.

Zone-V: Includes non-forest government lands, C & D class revenue lands transferred to the Forest department, gomal (grazing lands), panchayat lands and Betta lands. Individuals and groups have various types of rights in such lands.

It would be evident that the five zones are progressively not only ecologically graded but also more complex in terms of rights. Whereas in Zone-I only individuals have limited rights, in Zones IV and V not only individuals but also groups have various types of rights. In terms of involvement of people for protection and afforestation, therefore, different types of legal strategies would have to be worked out.

It is interesting to note that the area selected for this project is Uttar Kannada in which the forest area is 829,151 hectares, 80.57 per cent of the total district area, most of which is reserved forest area. Only 20.90 sq. km are village forests. The cattle population is 517,366 (1983 Census), the smallest in the state, except for Bangalore. What this means is that the legal strategy for this district would have to base itself mainly on the legal framework pertaining to reserved forests. The other types of land (legally) available for forestry are marginal. Alternative legal models would have to be worked out for them. This experimentation with alternative models would be helpful for application in other districts of the Western Ghats, although Uttar Kannada is not representative of the rest of Karnataka. In most of the other districts of Western Ghats, the areas outside the reserved forests, including wastelands, are far bigger, and hence the legal models outside the reserved forests (where there is a complexity of individual and group rights) would take primacy.

The total availability of government wastelands in Uttar Kannada on which forestry work is required is only 13,791 hectares, which includes 747 ha., of C class and 525 ha., of D class lands already transferred from the Revenue Department to the Forest Department, as well as another 3756 ha., of such lands available for transfer. In Uttar Kannada, therefore, the legal strategy required for the protection of 829,151 ha., must necessarily take priority over the reforestation of 13,791 ha.

As mentioned earlier, the project proposal does not define the legal status or nature of the legal entities that will be involved in the protection and afforestation work. Nor does it mention the nature of contract or benefit sharing rules that will

be applicable in the execution of the project. A study of these issues must, therefore, turn to the earlier models that the government has applied in other similar projects, such as the social forestry projects, as well as the models that it is tentatively contemplating now. Since these matters have not been spelt out in the project proposal, the assumption is that the government will continue to develop the legal models that it had used earlier and apply them in this project too. But before we turn to examine these earlier models and analyse their appropriateness for this project, it will be necessary to be familiar with the legal provisions that form the legal framework for the project and which, therefore, relate to whatever strategy the project may adopt.

The project will attract the following legal provisions :

a) Constitutional Provisions

Article 14 - equality before the law, which means that the forest panchayats, mandal panchayats, forest committees and other legally recognised groups or individuals (bearing rights) have an equal right in benefit sharing and the state cannot be partial.

Article 19 (1) - the right to reside. This implies that forest villages or revenue villages inside forest areas cannot be evacuated arbitrarily for the sake of conservation of forests or wildlife.

Article 21 - right to life and livelihood. This means that the state cannot deprive the local people of resources in case their life and livelihood depend upon them. It must be noted that in the forest areas the livelihood of the people, specially the tribals, does depend upon the availability of forest resources.

Article 39 (n) & (c) - the duty of the state to use the common resources for common good. This implies that the state cannot decide to use all or most of the resources for industrial purposes and deprive the local people of the benefit of these resources.

Traditionally in India the forestry work plans have been continuously violating these Constitutional provisions. This is

true in Karnataka too. Since the state itself (through the Forest Department) has been involved in the violation of the Constitutional mandate, there is little that the judiciary has been able to do to enforce the constitutional rights or directives. Needless to say, this project need not continue to emulate the traditional work plans and violate the constitutional provisions. We shall see subsequently how some of this can be achieved. It is important to note that the reserved forests of Uttar Kannada have traditionally been used mainly to supply raw material to the industries, grossly neglecting the development of the local people. There is little reason now why the local people should turn to protect the forests, when they very well know that the fruit of their labour will go to outsiders. If protection is really intended, following the constitutional provisions is a matter of practical necessity.

b) Statutory Provisions

The Central Forest Conservation Act, 1980 prevents the state government from leasing out forest land to individuals or groups without permission of the central government. Policies and notifications of the central Ministry of Environment have not favoured any such lease or contracts with local people so far.

The Karnataka Forest Act, 1963, modelled on the Indian Forest Act, 1927, governs the rights of the people in forest areas. The Act has been used to abolish rights of the people in reserved forest areas. The earlier Act (1927) allowed creation and management of village forests. The 1963 Act allows the Forest Department to acquire all village forests. The Act does not make any provisions for joint management with village societies, panchayats or cooperatives. Regulation of species, collection of minor forest produce, transit of timber and marketing are all controlled by the Rules under this Act.

In Karnataka, forest labour is not regulated any more by the Forest Rules. The trend is to follow the rules laid down by the Public Works Department, which, in turn, keeps the Minimum Wages Act in mind. The daily wage for forest labour at present

is about Rs.17.50, which works out to be equivalent to the daily wage for agricultural labour. The actual payment at the ground level, however, is much less because the administrative machinery for the implementation of the minimum wages is hardly effective. Keeping in mind that this project is mainly labour intensive and that people's participation, by and large, is going to be in terms of daily wage earnings, issues concerning payment of wages take a high priority.

The Karnataka Zilla Parishad, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983. In accordance with this Act the district level development planning, which includes planning for forests, is to be done by the Zilla Parishads. The Parishad, therefore, has the right and powers to control land use and allocation of development funds. The act also gives the government the power to vest revenue and other public lands in the Mandal panchayats and Zilla Parishads (section 182).

The Karnataka Land Reforms Act, 1974. The Act puts a ceiling on the size of land holding by individuals. In accordance with the provisions of this Act an individual (the male head of the family) is allowed to hold 54 acres of 'D' class dry land, not more than 15 acres of 'B' or 'C' class 'garden' land, and not more than 10 acres of fertile cultivable land. This ceiling law has a direct impact on farm forestry and the type of associations the farmers can form for forestry purposes.

Besides the laws which concern the resources and their management there are other laws relating to the organisational aspect, such as the Cooperatives Act and the Societies Registration Act. We shall consider them in the context of the organisational alternatives that the government has used or proposed so far. Let us now turn to critically evaluate the legal models that have been used in the state earlier for joint management of forest resources and people's participation, including those that have been proposed by the central and the Karnataka governments recently.

Section -II

The Prevalent Legal Models

a) Historical Background

The present phase of the state's interest in people's involvement in the management of forestry, during the 1980s and the 90s, is the second cycle in the historical evolution of forestry in Karnataka. The first cycle occurred during the 1920s-30s. Prior to 1920, that is, before the establishment of the Forest Department in the state, some forests were managed by the local organisations, but most of them managed by nature itself. After the enactment of the 1912 Forest Act, which initially provided for the take over of the management of forests by the government, it was observed that traditional community resource management systems existed. Consequently, during 1920s the erstwhile Bombay Presidency proposed Forest Panchayat system, specially in the Kanara districts. Accordingly the Bombay Forest Act was revised to hand over certain forest areas to the newly proposed village Forest Panchayats. Reserved forests in the vicinity of villages were handed over to the forest panchayats. These forest panchayats were modelled on the pattern of the forest panchayats of the U.P. hill areas. Such panchayats, under their rules, included members of the land owners as well as the land less. They also assured representation of all castes in the panchayats.

The period from the 1920's to the 1990's has seen a progressive state control of forest resources. The Indian Forest Act of 1927 brought about an unlimited control of the land and its resources by the state, resulting in a centralising of power from the panchayat to the state level and finally to the central level in the 1980's through the Forest Conservation Act. The forest laws have been used in this period to usurp the forest resources and favour the industries. The Indian Forest Act which 'reserved' or 'protected' the forests never said reserved for whom or protected against what. Looking at the resource use, it has been evident to the people that the forests have been reserved mainly for industrial use and protected against the local people. The Forest Conservation Act, similarly, does not

say 'conserved' for what. Like the Indian Forest Act it protects the forest land but not the resources on it. As a result, despite the Conservation Act, the states are free to exploit the forests for industrial purposes, which they have continued to do. The consequence of this grossly inequitable use of the forest resources and usurpation of powers has been one of eliminating the people progressively from the management of forest resources and making them perceive the forest administration as agents for outside industrial and urban interests.

Once this perception set in, the forest panchayats too were caught up in the 'tragedy of the commons' in Karnataka. They, like the tribals, started exploiting the forests faster than the Forest Department, lest outside agencies usurped the resources. The Department, however, having greater power, eventually won in the struggle for control of resources. In 1963 it amended the Forest Act, to form the new Karnataka Forest Act, 1963, through which it simply took over all panchayat forests. In North Kannada specially, the local groups resisted this exercise of arbitrary power. They refused to hand over the records to the government. In 1979, the Deputy Commissioner of Karwar ordered the ex-forest panchayats of Moorur, Kallabbe and Hosad to hand over all records to the Forest Department, since these forest panchayats were the ones which were most reluctant to let the control over resources pass over to centralised agencies. While most other forest panchayats followed the government orders, those of Moorur, Kallabbe and Hasad groups filed a writ petition in the Karnataka High Court against the order of the deputy Commissioner, under articles 226 and 227 of the Constitution of India (Writ Petition No. : 5539/80, under the Original Jurisdiction of the High Court). The High Court of Karnataka, in their order dated 16.10.1979, issued an interim order of stay, allowing the groups to continue their functions as forest panchayats. As the situation now stands, although technically from the perspective of the Forest Department, the forest panchayats stand dissolved, in fact they continue to function in many areas of North Kannada due to the court order. Some forest panchayats,

such as the one in Halkar for example, have managed to keep the outside interference at the minimum and protect their forest in its virgin state.

In terms of people's involvement, the forest panchayats have been the only genuine experience in Karnataka. Unlike Gujarat, the state has not encouraged the formation of forest cooperatives. The number of non-government organisations is too small to handle the vast task of afforestation and protection. No statutory models have been worked out for local participation under the Integrated Rural Development Programme (IRDP), the Drought Prone Areas Programme (DPAP), or the National Rural Employment Programme (NREP). These programmes have simply used the labour of the local people for afforestation purposes. Some arrangements have, however, been tried out under the social forestry programmes. Let us turn to take a look at these alternatives.

b) Social Forestry Models

The organisation and benefit sharing models for social forestry programme were based on certain government orders. No legislative or statutory changes were made. The relevant government orders are :

- i) GO No : FFD 51 FDP 81. dated 1.3.1982.
- ii) GO No.: FFD 177 FAP 84. dated 27.12.1984.
- iii) D.O. Letter No: AHFF 177 AFP 84. dated 14.8.1986.

In 1978 the government had adopted the policy of leasing C & D class wastelands to wood based industries. The revised 1982 order included other beneficiaries, such as small farmers, scheduled castes and tribes and agricultural cooperative societies. Land under consideration here was that which was transferred by the Revenue Department to the Forest Department.

A review of the social forestry programme shows that although the industries did benefit to some extent from this scheme, the situation concerning meeting the demands for people's fuel and fodder needs did not really improve.

Moreover, there is a legal complexity in this type of land leasing. After the Forest Conservation Act, 1980, the states cannot lease out forest land (even land transferred to the Forest Department and notified under section 4 of the Forest Act) without the permission of the central government. Many village groups of Dharwad district, led by the Samaj Parivartan Samudaya, a Dharwad based NGO, filed and won a case against the Karnataka government, first in the Karnataka High Court and then in the Supreme Court (*Harihar Polyfibers v. Kamath*), for leasing out C & D class lands to industries. The case claimed not only that the Karnataka government leased out land without the centre's permission and hence violated the Forest Conservation Act, but also that many of the so-called C & D class lands are either gomal lands (grazing land) or have been traditionally used for grazing. From the point of view of the livelihood of the villagers there is no difference between the gomal lands and C & D class lands. The petition pointed out that this plan of leasing land violates Article 21 of the Constitution.

One of the main reasons for this type of joint management has been that the Forest Department has been unable to enter into agreements with people's groups for regeneration of the denuded lands. While on the other hand, it has entered in to joint management plans, through the Forest Corporation, with the industries for commercial forestry, including on C & D class lands. The main objective of 'social forestry' is thus defeated.

Unlike in other states, no forest protection committees were formed in Karnataka for the purposes of social forestry. On panchayat lands the government simply took a resolution from the panchayats to allow the Forest Department to plant such lands, with the promise that these will be handed over to the panchayats for harvesting and benefit sharing. No statutory arrangements were made for the procedures of 'handing over', or benefit sharing. These powers belong to the Mandal Panchayats under the Panchayat Act. Through notification [No.: B3/TPI/RDP/CR-18/86-87. dated : 1.6.1990] the Karnataka government decided to hand over the social forestry

work done under RLEGP/NREP/DRAP programmes to the Mandal Panchayats, with the condition that 50 per cent of the produce will be given to the panchayats provided they were willing to maintain and take care of the plantations till harvesting time. Notwithstanding this, the plantations will be given to the Zilla Parishads or the territorial wing of the Forest Department. Records of the Forest Department show that very few Mandal Panchayats have actually agreed to take over the management of these plantations, despite the 50 per cent benefit sharing scheme. The main reasons for this are that most panchayats have no expertise in maintaining forests, they do not have the funds to keep watchmen, and lastly, they do not perceive afforestation as their task. They assume it to be that of the Forest Department, which in any case should be giving them 100 per cent benefit and not merely 50 per cent.

c) The Wasteland Board Model

The Ministry of Environment, government of India, issued a notification to all state governments that they must involve cooperatives, registered societies and non-government organisations in afforestation and protection of forests. It, however, made clear that no lease was to be given to any one on forest lands. Only usufruct rights are allowed [Notification No : 6.21/89/FP. dated 1.6.1990].

It must be noted that there are very few NGOs and the task of regeneration is at a massive scale. Involvement of NGOs, therefore, can only be marginal, from the point of view of afforestation or protection. Moreover, in Karnataka there are no functional forest cooperatives who can take up this task. The main significance of the notification, hence, must be interpreted in terms of giving people usufruct rights. Given that the general tendency in the state, which has been one of progressively reducing people's rights in forests, the importance of this order must be interpreted as re-establishing people's usufruct rights in forests to the extent which makes them have a vested interest in the protection and maintenance of forests.

d) The Integrated Western Ghats Project Model

For the purpose of the project the Karnataka Forest Department has proposed a new scheme for involvement of village communities [No.: B2-CR-100-MIS/90-91 dated : 5.12.1990]. Two alternatives have been proposed under this scheme. In the first model village community/panchayat will pass a resolution to allow the Forest Department to work on panchayat lands (where necessary), and the Department will also work on the gomal lands, C & D class lands, revenue lands, tank offshore, etc. The plantation will be handed over to the village community/panchayat, who would take 50 per cent of the share on harvesting. In the second model, the initial funding for afforestation and maintenance will be done by the village community/panchayat and the Forest Department will provide only technical expertise. In this case 75 per cent of the benefits will be taken by the village community/panchayat.

The proposal does not define the legal status or nature of the 'village community'. Nor does it address itself to the fact that in the proposed project area more than 80 per cent of the land is reserved forests, where the question of handing over anything to the village community or panchayats does not arise. The proposal does, however, seek the involvement of the village community/panchayats in the making of work plans for the area.

Section-III

Analysis and Recommendations

The legal framework for forestry in India, including Karnataka, has been designed for an economy of plenty - where there are plenty of resources and the main task of the forest administration has been to make appropriate contractual arrangements to harvest the forests and supply raw material to the industries. In such an arrangement defending the territory from which the resources can be supplied has been the main job of the administration, even at the cost of alienating itself from the local people - hence the creation of the main

'territorial wing' of the Department. Now that there is an economy of scarcity the existing legal framework is evidently inappropriate for forestry purposes. In this economy the Department will need people's labour to plant and protect trees - almost on the same scale and extent as required for agricultural work, it will also require massive extension work as is the case in agriculture. In such a situation the Department cannot afford to be seen as opposed to the interests of the local people, especially since it is only the local people who can plant and protect the trees in the long run.

The other basic assumption in forestry work in India is that it is only the task of the Forest Department to grow and supply forest resources. Imagine if the Agricultural Department took over the task of growing and supplying all food resources to all Indians. Why must the state alone take up this task in the case of forest resources? In an economy of plenty one Department would be enough to organise the cutting down of trees, but in the scarcity situation the engagement of only one agency in the production of the resource is counter-productive. There is a need for independent agencies, such as cooperatives, societies and panchayats to take up forestry work to meet the needs of the people. The forestry laws must accommodate this transformation.

However, as we have seen, the pre-Independence and pre-constitutional types of laws continue to operate. The forestry programmes continue to ignore the local needs. One has to only compare the budget, revenues and work-plans related to industrial needs as against those for the needs of the local rural and tribal people. This is not to say that the industrial needs should not be met, but only that if there is no equity between the local needs and those of the industries expecting the local people to grow or protect forests is at best wishful thinking. It is to assume that the people are foolish enough to allow themselves to be blindly exploited for serving the industrial cause, which is mainly the cause of the urban rich. The people not being foolish, and observing that the Forest Department is being used by the state to serve the interests of the urban rich in exploiting the forest resources, have often attempted to

outwit the Department in appropriating the resources before the Department can do it. We see thus the Forest Panchayats of Karnataka destroying the forests before the Department can usurp it; we see also the tribals, who have looked after the forests for centuries, turn against the forests and attempt to take as much for themselves as they can afford to; we see similarly the people being indifferent to the 'social' forestry programme, in their wisdom, when they can clearly see that no statutory rights are being created in their favour and the species being planted are mainly of commercial value. The IRDP, NREP, DPAP and other rural development programmes, in which forestry work has been carried out by the people, have been perceived by them mainly as employment opportunities, with no obligations to protect these trees in the long run.

If people's involvement is required - which is inevitable if wastelands are to be regenerated and the remaining forests protected, some basic re-structuring has to be done of the whole legal framework pertaining to forestry. Together with the law the attitudinal and behavioural changes will also be required in relation to the people. Mere tinkering with vague ideas such as 'link organisations' and 'village communities' will not do, nor will the 'handing over' strategy work when in the long run neither the panchayats nor the Forest Department are committed to the sustenance of these 'handed over' plantations.

The major changes required in the legal framework are of various types. Here we are concerned only with the people's involvement issue, hence let us turn to see the alternatives available. These issues are mainly of two types: those concerning the organisational set-up and benefit sharing with these organisations and those concerning management, in terms of the administrative hurdles that come up in benefit sharing and forestry work by the organisations.

a) Organisational Issues

To begin with, it must be clear that since there are different types of forest lands, in terms of the extent, nature and number of right holders, the same strategy cannot work everywhere. For example, the gomal or tank offshore lands would require a different management than reserved forests. A general entity called 'village community' would be inappropriate for these two types of lands. Panchayat lands, vested in them, would similarly require a different type of organisational set-up for their management.

In areas where there are gomal lands, C & D class lands, other government wastelands and proper panchayats, that is in Zone IV and V of this scheme, the primary village level organisation is evidently the panchayat. The power to control and use such lands has now been vested in these panchayats in the Karnataka decentralised panchayati system. Creating any other statutory or non-statutory body now would bring about a conflicting situation. Hence developmental work in these areas must necessarily be done through the panchayats. In other states, such as Orissa and Tamilnadu, Village Forest Committees have been created to look after forestry work. This was possible because the panchayati system in these states was not functional at that time. Creating non-statutory agencies such as the Village Forest Committees has its own problems. Since such bodies have only an administrative status and not a legal one (that is, they are not recognised as a legal entity capable of independent functions, they have a limited existence with reference to the Department alone), they are incapable of making independent managerial decisions. In Orissa a law had to be passed to make the Village Forest Committees a statutory body. This is not an ideal situation since the duties to look after village common lands are already vested in the panchayats. Conflict of interest is inevitable at some time.

In Zones IV and V types of areas, therefore, there is no need to set up ad hoc 'village communities'. The choice is limited after the powers that have been given to the Mandal Panchayats and Zilla Parishads. The giving of such powers to

these elected groups is in keeping with the Constitutional demand of democratic self-governance. Any village level forestry work must, hence, necessarily involve the panchayats.

However, the present panchayat system and law has not been properly construed in relationship to forestry work, mainly because traditionally such work has not been counted as one of the developmental works at the rural level. Merely giving the panchayats the powers, without giving them corresponding duties and making the financial arrangements, is not going to be conducive to forestry purposes. The Panchayat Act needs to be amended to oblige the panchayats to maintain the forests on a sustained yield basis. In fact, keeping in mind that these village level organisations are going to carry on a task which is similar to that of the Forest Department, some of the legal provisions required by the Department, under the Forest Act and the Forest Conservation Act, will be required by the panchayats too. Some of the powers and duties under these Acts must, therefore, also be present in the Panchayat Act. In particular, use of forest lands in the village must not be allowed for non-forestry purposes; the panchayats must not be allowed to clear fell the forests; the penal powers under the Forest Act must also be available to the panchayats; the flow of development funds from the state, for forestry purposes, must be directly available to the panchayats, so that they can appoint forest guards and other managers; and most significantly, the panchayat must have a total control over the revenue generated from the village forests, with the proviso that a certain percentage of the revenue must necessarily be used for the regeneration and maintenance of the forests (the percentage required for this purpose). In short, now that the state has taken the right step to strengthen the rural level agency, further developmental and legal steps are necessary to equip it for the forestry work.

Once the relevant provisions of the Forest Act and the Conservation Act are incorporated into the Panchayat Act, the state, specially the Forest Department needs to make land allotments or leases to the panchayats for forestry work so as to maximise the number of village forests. The Department need

not keep all the wastelands, and the Revenue Department need not necessarily transfer all the C & D class lands to the Department alone. It can transfer them to the panchayats. It **must be remembered that a large percentage of land presently available with the Forest Department is that which was with the villages before and was taken over by the Department, in the name of joint management or by direct acquisition.** Such allotment of forests lands to the panchayats will not violate the Forest Conservation Act (including the 1988 amendment), since in this case, land is being merely transferred for forestry purposes and not to a non-government entity (the panchayats are 'appropriate government' too within the meaning of law, they are local level governments).

In reserved forests areas, where there is no question of land allotment or lease and the right holders are unit families or individuals, the strategy would have to be different. The choice is **between setting up administrative bodies, such as the Forest Protection Committees through government orders or statutory bodies such as Forest Panchayats.** The basic issue is how does one make sure that these bodies will not become dis-functional as the earlier Forest Panchayats did? In the dissolution of the Forest Panchayats in 1963 the government never went into the question of why these bodies became inadequate for their tasks. It simply ignored the role played by the Forest Department and its impact on the Panchayats. Given the present context and a better understanding of the forestry situation in India, the whole question of Forest Panchayats needs to be re-thought. Not simply as users of the forest resources, as was the case earlier, but those who will have an active role in the regeneration and protection of forests. The West Bengal type of Forest Protection Committees is a case in point here for consideration. Karnataka, however, has had a richer experience in the Forest Panchayats earlier. What is required is to revitalise the Forest Panchayat system again, not as sole owners and users of forests, but as those sharing the benefits in the manner of the West Bengal Committees. Such Panchayats can be set up through a government notification, but the better alternative would be to amend the Karnataka

Forest Act, 1963. The Panchayats would then have a statutory standing and hence more security in their functions.

To make the Forest Panchayats functional, sufficient vested interest will have to be created in terms of benefit sharing. Abolition of all rights in the reserved forests areas, as has been presently done under the Forest Act, is evidently not conducive to the situation. As we have seen, even the constitutional mandate - Articles 21 and 39 (b) & (c) - makes this demand. The usufruct rights of the people will have to be established to make them equitable with the industrial use of the reserved forests. If the people benefit at least as much from these forests as the industries do, their interest in protecting them will be greater. The settlement of rights with the people, hence, must be taken afresh on a rational and equitable basis. In the present situation, despite a government order to make the resources available to the people on a priority basis, people's needs get ignored because the resources are sold in auctions for which the local people have little purchasing power.

Under the Forest Act, the local people are paid only for their labour for collecting the minor forest produce. Once the rights in these minor produce are vested in the people they will begin to get the value of the good along with the price for their labour in collection. The project must, hence, seriously consider vesting rights over minor forest produce with the forest dwellers and the local people living close to the forests. A writ petition to this effect has already been moved by the Commissioner of Scheduled Castes and Tribes in the Supreme Court in December, 1990 (*B.D. Sharma v. The President of India*).

b) Managerial Issues

If the people are to have a free choice in the regeneration of wastelands, some administrative obstacles need to be removed.

The first amongst these is the control over species under the Schedules of the Forest Act - trees which are defined as forest species, scheduled trees or royalty trees. Since permission is required from the Department to harvest these trees even on

private lands, people tend to keep away from growing or maintaining such trees. They tend to go in for species which do not come under the schedule. Almost all trees of commercial value, such as teak and sandal wood come under the jurisdiction of the Department. The point of having this power has been to avoid theft of wood from the forest areas. At this point when there is more wasteland than tree coverage, the use of this power needs to be rationalised. It needs to be strictly applied only in and close to areas where there is genuine forest cover, and liberalised in all areas away from standing forests.

The second obstacle comes from transit rules under the Forest Act. Here again the restrictions have been brought about to stop theft of wood; and here too rationalisation of the application of rules is required in terms of whether or not there are real standing forests in the areas. As in the case of species control, the rules need to be liberalised in all areas where there are no forests.

As far as farm forestry is concerned, the land ceiling laws are evidently counter-productive in relation to forestry. Any economically viable farm forest requires large tracts of consolidated lands. If farmers are to form cooperatives for agro-forestry, much thought needs to be given to the land ceiling laws.

The emphasis on Mandal Panchayats and Forest Panchayats in this Report is not intended to relegate the role of the non-government organisation into insignificance. The NGOs can certainly play not only important extension and educational roles, but can also take up forestry work where possible. However, looking at the scale of the task and the ubiquitous presence of the already functioning statutory bodies, the operative organisational and legal framework cannot be ignored. In the long run, the local self-governments form the backbone of democracy in India, and if a forestry programme can help to strengthen this democratisation, there is no reason why it should not.

Section-IV

Salient Features of The Karnataka Forest Act

KARNATAKA ACT NO. 12 OF 1998.

(First published in the Karnataka Gazette Extraordinary on the Eleventh day of May, 1998)

THE KARNATAKA FOREST AND CERTAIN OTHER LAW (AMENDMENT) ACT, 1997.

(Received the assent of the Governor on the Eight day of May, 1998)

An Act further to amend the Karnataka Forest Act, 1963 and the Karnataka Preservation of Trees Act, 1976.

Whereas it is expedient further to amend the Karnataka Forest Act, 1963 (Karnataka Act 5 of 1964) and the Karnataka Preservation of Trees Act, 1976 (Karnataka Act 76 of 1976) for the purposes hereinafter appearing;

Be it enacted by the Karnataka State Legislature in the Forty-eight year of the Republic of India as follows:-

1. **Short title and commencement-** (1) This Act may be called the Karnataka Forest and Certain other Law (Amendment) Act, 1997.

(2) It shall come into force at once.

2. **Amendment of Karnataka Act 5 of 1964-** In the Karnataka Forest Act, 1963 (Karnataka Act 5 of 1964)-

(1) in section 2,

(i) in clause (7)

(a) in sub-clause (a), the words "cocoa beans or pods" shall be omitted;

(b) in sub-clause (b), after item (iv) the following shall be inserted, namely:-

(iva) "cocoa beans or pods, garcinia fruits, thornless bamboos. Halmaddi, Raldhupa and Kaidhupa."

(ii) in clause (18), after the words "flakes or pulp" the words "and sandal wood oil" shall be inserted.

(iii) after clause (22) the following shall be inserted namely:-

"(23) "Village Forest Committee" means a Village Forest Committee constituted under section 31A".

(2) after section 31, the following shall be inserted, namely:-

"31A. Constitution of Village Forest Committee for Joint Forest Planning and Management of Forest:- (1) For the purpose of Joint Forest Planning and Management of forest, the State Government may, by notification constitute a Village Forest Committee in respect of a village or group of villages:

(2) The Government may by rules provide for-

- (i) the powers, duties and responsibilities of Village Forest Planning Committee;
- (ii) the conduct of elections to the Committee;
- (iii) qualification and disqualifications of Members of Village Forest Committee;
- (iv) the powers and duties of Forest Officer;
- (v) preparation and execution of management plans;
- (vi) protection, development and management of forest by the Committee;
- (vii) sharing mechanism, audit and accounts;
- (viii) appointment of administrators or administrative Committees;
- (ix) settlement of disputes;
- (x) monitoring and evaluation; and
- "(xi) any other matter incidental thereto.";

(3) in section 41, sub-section (2) shall be omitted;

(4) in section 50, in sub-section (2):-

- (i) in clause (k-a),
 - (a) in the brackets, after the word "license", the words "or to get it renewed" shall be inserted;
 - (b) after the words "existing saw pits", the words "starting new saw pits" shall be inserted;
- (ii) after clause (k-a), the following clause shall be inserted, namely :-

"(k-b) provide for levy of fee for grant or renewal of licence for saw mills, saw pits and other sawing contrivances.";

(5) in section 62,

(i) in sub-section (1) for the words "cattle-used" the words, "cattle or any other property used" shall be substituted,

(ii) in sub-section (3)

(a) the words starting with "shall place" and ending with the words "so seized and" shall be omitted.

(b) in clause (a), after the word "ivory", the words "Gulmavu (machilus macrantha) bark, Dalchini bark, Halmaddi (exudation of Ailanthus malabaricum), canes" shall be inserted;

(6) in section 63, after the words "release the same on", the words "production of a Bank guarantee equal to the value as estimated by such officer (which shall be renewable from time to time till the final disposal of the criminal proceedings instituted in respect of the alleged offence) and on" shall be inserted;

(7) in section 64A, after the words "reserved forest" in the two places where they occur, the words "district forest, village forest, protected forest and any other land under the control of the Forest Department" shall be inserted;

(8) in section 71A.-

(i) in sub-section (1) after the word "ivory", the words and brackets "Gulmavu (Machilus marantha) bark, Dalchini bark, Halmaddi (exudation of Ailanthus malabaricum), canes" shall be inserted.

(ii) in sub-section (2), after the word "fire wood" the words and brackets "Gulmavu (Machilus marantha) bark, Dalchini bark, Halmaddi (exudation of Ailanthus malabaricum), canes" shall be inserted.

(9) in section 71B, in sub-section (1) and (2), after the word "firewood", the words and brackets "Gulmavu (Machilus

macrantha) bark, Dalchini bark, Halmaddi (exudation of *Ailanthus malabaricum*), canes" shall be inserted;

(10) in section 71G, after the word "Ivory", the words and brackets "Gulmavu (*Machilus marantha*) bark, Dalchini Bark, Halmaddi (exudation of *Ailanthus malabaricum*), canes" shall be inserted;

(11) in section 79 in sub-section (1):-

- (i) in clause (a) for the words "five thousand rupees", the words, "fifty thousands rupees" shall be substituted;
- (ii) in clause (b) for the words "as estimated by such officer", the words "as may be prescribed" shall be substituted;

(12) after section 82, the following shall be inserted, namely:-

"82A. Criminal liability of licensee for acts of servants- Where any offence under this Act or rules made thereunder, is committed by any person in the employment and acting on behalf of the holder of a licence or permit granted under this Act, such holder shall also be punishable with a fine which, may extend to rupees fifteen thousand as if he had committed the said offence unless he establishes that all due and reasonable precautions were exercised by him to prevent the commission of such offence;

Provided that no person other than the actual offender shall be punishable with imprisonment except in default of payment of fine.

82B. Offence by Companies etc- (1) If the person committing an offence under this Act is a Company, the company as well as every person in charge of, and responsible to the company for the conduct of its business at the time of the commission of the offence shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of

(2) Notwithstanding anything contained in sub-section (1) where an offence under this section has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :- For the purposes of this section:-

(a) "Company" means any body corporate and includes a firm or other association of individuals; and

(b) "Director" in relation to a firm, means a partner in the firm";

(13) in section 86, in the proviso, in item (i), for the words "ten thousand rupees", the words "five thousand rupees" shall be substituted.

(14) in section 87, in sub-section (2), in the proviso, in item

(i) for the words "ten thousand rupees", the words "five thousand rupees" shall be substituted.

3. Amendment of Karnataka Act, 76 of 1976- In the Karnataka Preservation of Trees Act, 1976 (Karnataka Act 76 of 1976):-

(i) in section 2,

(i) in clause (b), for the words "Notified Area Committee or a Taluk Development Board", the words "Town Panchayat or a Taluk Panchayat" shall be substituted;

(ii) in clause (h), for the words "Chief Conservator" the words "Principal Chief Conservator" shall be substituted;

(iii) in clause (i) for the words "Municipal Corporation, a Municipality or a Notified Area Committee", the words "larger urban area, smaller urban area, or a transitional area" shall be substituted;

(2) in section 3, in sub-section (2),

- (i) in clause (a), for the words "Notified Area Committee" wherever they occur, the words "Town Panchayat" shall be substituted.
- (ii) in clause (c)-
 - (a) for item (i), the following shall be substituted, namely:-
 - "(i) the Adhyaksha of the Taluk Panchayat;"
 - (b) for item (v), including the proviso, the following shall be substituted, namely:-
 - "(v) one member of the Taluk Panchayat nominated by the Adhyaksha";
- (3) in section 5
 - (i) in sub-section (1) for the words "Chief Conservator" the words "Principal Chief Conservator" shall be substituted.
 - (ii) in sub-section (2),
 - (a) in clause (i) for the words "Municipal Corporation" the words "larger urban area" shall be substituted;
 - (b) in clause (ii), for the words "Municipality or a Notified Area Committee" the words "smaller urban area or a transitional area" shall be substituted;
- (4) in section 6, for the words "Chief Conservator" the words "Principal Chief Conservator" shall be substituted;
- (5) in section 8,
 - (i) in sub-section (1), the following proviso shall be inserted, namely:-

"Provided that no permission shall be granted under this section for felling of trees if it involves felling of all trees in the areas proposed for cultivation or extension of cultivation of rubber or tea."
 - (ii) in sub-section (3), in the proviso, for clause (vi), the following shall be substituted, namely:-
 - "(vi) is required to be removed either for cultivation, extension of cultivation or change in crop cultivation in areas specified in Schedule II, (except where such removal does not involve felling of all trees in the areas proposed for cultivation,

extension of cultivation or change in crop cultivation), or for the bonafide use of the applicant.

(iii) for sub-section (4), the following shall be substituted, namely:-

"(4) The tree Officer shall make all possible endeavour to dispose off the application received under this section within a period of three months from the date of its receipt;

"Provided that in computing the period of three months under this sub-section, the time required to obtain-

- (a) opinion from revenue authorities;
- (b) report from the Assistant Director of Land Records;
- (c) measurement list of trees intended to be felled, or
- (d) any other relevant information as may be prescribed shall be excluded."

(iv) in sub-section (6) after the word "timber" the words "fifty poles and bamboo's" shall be inserted;

(6) after section 8, the following section shall be inserted, namely-

"8A. Cancellation or suspension of permission granted under section 8:- The tree officer may cancel or suspend the permission granted under section 8 on any of the grounds specified below, after giving an opportunity of being heard to the grantee and after recording reasons therefore, namely:-

- (a) furnishing of false or wrong information to obtain permission;
- (b) discovery of defects in title;
- (c) misuse of felling permission;
- (d) non-fulfilment of conditions of felling permission;
- (e) violation of any provisions of this Act or the rules or orders made thereunder;
- (f) felling of unpermitted trees;
- (g) dispute between grantee and others";

(7) in section 14, in sub-section (1), after the figure "8" the figure and letter "8A" shall be inserted;

(8) in section 21, in clause (a), for the words, "not exceeding five thousand rupees" the words, "equivalent to twenty five percent of the value of the property involved in the offence" shall be substituted:

(9) after section 22, the following shall be inserted, namely:-

"22A. Offences by companies:- (1) If the person committing an offence under this Act is a company, the Company as well as every person incharge of and responsible to the Company for the conduct of its business at the time of the commission of the offence shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this section has been committed with the consent or connivance of, or that the commission of the offence is attributable to any neglect on the part of any Director, Manager, Secretary or other officer of the Company, such Director, Manager, Secretary or other Officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :- For the purpose of this section.-

- (a) "Company" means any body corporate and includes a firm or other association of individuals; and
- (b) "Director" in relation to a firm, means "a partner in the firm".

(10) in Schedule I, the words "Coffee, Cardamom, and Cocoa" shall be omitted.

By Order and in the name of the
Governor of Karnataka,

(M.R. HEGDE)
Secretary to Government,
Department of Parliamentary Affairs
and Legislation

Chapter Nine

THE TREE GROWERS COOPERATIVE PROJECT A REVIEW

The remarks in this chapter assume a familiarity with the details of the Tree Growers Cooperatives Project (TGCP). They are intended to highlight the legal issues involved in the project. Likely solutions to the problems are also indicated.

Before we begin enlisting the legal issues and problems, there are three important points that need to be noted.

First, that afforestation of private and common lands through people's initiatives and participation, which is being attempted through the TGCP, has been tried earlier by the government in its social forestry programmes, in the 'community woodlots' and 'tree tenure' schemes. Hence, the legal problems that were confronted in these schemes would be similar to those faced by TGCP. The major difference is that while in the social forestry schemes the government itself attempted to deal with private lands and common revenue of panchayat lands, in the TGCP it has sought the assistance of a non-government organisation to carry out a similar task. Such a change does not make a difference to the legal situation, except that the implementing agencies involved now are different.

Second, the NDDB has hitherto dealt with a legal framework in which the people it has involved have used a private property, such as cows or buffaloes, over which they have had a personal control. In the TGCP the commodities in use, namely trees, even if on private lands, are regulated through a legal framework which allows state control. This is, therefore, a totally different kind of enterprise for the NDDB, in which different legal strategies will be required.

Third, along with programmes, such as the TGCP, the government has also simultaneously promulgated the Joint

Forestry Management Programmes (JFMP), in those very states in which the TGCP is to be carried out. The JFMP is to be executed on forest and other government lands. The Notification for this was issued by the central government in June 1990, and by the state governments in 1991. In the context of TGCP this implies that since 1990, the governments have changed their policy as regards afforestation schemes, namely that the state will call for people's involvement only on government lands (forest lands), and it will seek the assistance of non-government organisations to seek people involvement on private and common lands. Prima facie, such a strategy may seem reasonable, but it ignores the fact that for the execution of JFMP the state plans to set up a number of committees at the village levels, such as the Forest Protection Committees. In terms of organizational logistics this implies that there is going to be a multiplicity of institutions at the rural level. Many members who may be members of the tree grower's cooperatives would also be members of the Forest Protection Committees. How such a multiplicity of institutions at the rural level, including the panchayats, work together, or work simultaneously (considering that the membership is going to be common) is something that needs to be seriously considered.

Let us turn to review the specific legal issues that are involved in the TGCP in the common lands and the private lands respectively.

TGCP on Common Lands

- a) At the outset, it must be noted that most of the common lands, such as the grazing lands and village forest lands are under great pressure not only for multiple uses for different government projects, such as those under the IRDP, NREP and Social Forestry Schemes, but also for legal or illegal (encroachment) land settlement purposes. Various appraisals and reviews of Social Forestry projects have shown that the availability of common lands for exclusive forestry projects is questionable.

- b) Under the Panchayat Acts the common lands are vested in the panchayats. The panchayats have to pass a resolution to allow any other user groups to use these lands. The legal status of such resolutions are not statutorily binding. They can be revoked by another panchayat or the same panchayat at a later stage, (these resolutions do not amount to a promissory estoppel). In the Social Forestry Schemes, where other user groups, such as Forest Protection Committees or Mahila Mandals, have been allowed to use the common lands, the panchayats have been seen to reclaim their interests once the benefits have accrued. In the TGCP too the conflicts with the panchayats interests can be anticipated.
- c) Under the Panchayat Acts the beneficiaries from common lands are all right holders in the village or panchayats (namely all voting members or families of the panchayats.) Assigning or settling benefit rights with smaller user groups or specific individuals would be ultra-vires. The TGCP, like the Forest Protection Committees in West Bengal, may have to expand its membership to include all within a panchayat or a village. The basic institutional question that would then arise is why should the TGCP not work directly through the panchayats rather than the cooperatives, in so far as work on common lands is concerned.
- d) The institutional complexities, in terms of different user groups such as the TGCP and panchayats having different rights and entitlement on the same common lands, will make the drafting of benefit sharing rules equally complex. These complexities can be reduced if such sharing is arranged directly through the panchayats, rather than some smaller group which excludes other members of the village who have rights on common lands.
- e) Use of common lands in favour of specific user groups, such as cooperatives, or individuals, amounts to a

privatization of such commons (for the period of the lease). Such privatization of common lands is questionable from the point of view of the rights of the future users of the commons (future generations), specially considering that the time scale involved in forestry is much longer than that in agriculture or fodder production.

- f) Besides these general problems with the use of common lands there are some specific issues which arise from the laws and rules made under the Forest Act in different states.

In all states where the TGCP is to be implemented the rules under the Forest Act have a schedule of forest trees or 'royalty trees', for which the permission of the Forest Department is to be sought for both harvesting such trees and transporting them. The harvesting and 'transit rules', as has been clearly seen in the Social Forestry programmes, act as a disincentive to people to work with trees which are socially and economically useful to them. The Schedules usually specify trees which are of indigenous variety or of commercial worth. The harvesting and transit rules for most states need to be rationalized (and numerous government committees have given their recommendations to modify such rules), but by and large they still need to be implemented.

Let us now turn to briefly review the legal problems of forestry on private lands.

TGCP on Private Lands

- a) Unlike common lands, rules for benefit sharing for trees on private lands is not problematic. The consent and cooperation of the involved members needs to be secured. However, this arrangement can be made only for land owning members. It leaves out the vast majority of land-less and tribals.
- b) The species regulation rules and transit rules, under the Forest Acts, will create a similar problem for private tree owners as those working on common

lands. Rationalisation of such rules for private lands, hence, is equally necessary.

- c) Besides the species and transit rules under the Forest Acts, in some states there are Tree Protection Acts and Village Forest Acts, which, though enacted for the purpose of conservation and protection of trees by state agencies, create problems for private enterprises in forestry. Since under these Acts the states have a power to acquire lands on which trees have been planted, people are often reluctant to use their private lands for forestry purposes. Such Protection Acts and Village Forest Acts need to be amended to allow private endeavours, , in terms of providing tenural security which these Acts take away.
- d) An important phenomenon observed in farm forestry schemes in the Social Forestry programmes is that whereas the objective of the programme was to rejuvenate C or D class of private wastelands, most of private forestry took place on A or B class of fertile agricultural lands. The reason for this was that the marginal farmers and those whose livelihood depends upon agriculture are not in a position to do forestry on their lands. By and large, it is only the class of absentee landlords, whose major income comes from non-agricultural sources, who can afford to carry on long term afforestation projects. There is no reason for them to execute such projects on C or D class of wastelands. On the contrary, forestry on A or B class of land helps them to protect their land from encroachment as well as the provisions of the Land Reforms and Land Ceiling laws (which create rights for the tiller and do not allow fertile lands to remain fallow with the original owners). It is likely that the genuine clients of the TGCP are once again going to be the rich absent landlords, and no wasteland development will take place, unless serious amendments to the laws are made. If wasteland development is the real concern,

agricultural lands. This, evidently, requires larger considerations about land use, as to how much of India's land needs to be used for agriculture and how much for forestry. Use of fertile, irrigated lands for forestry depends largely on this decision. If there is a case that we are over producing in terms of food, or underutilising the available agricultural lands, only then can a rational decision be taken about the extent of farm forestry permissible on fertile lands, and the type of laws required. Otherwise, unknowingly we may be cutting at India's food production capabilities through so-called wasteland development programmes.

- e) There are other legal issues in private forestry for genuine farmers, if even for the moment we leave aside this misuse of fertile lands by absent landlords. The Land Ceiling laws are such that they do not allow economically profitable private incentives. Profitable forestry requires large pieces of consolidated lands so that irrigation and protection can be done at a minimal cost. Besides the fact that the Ceiling laws do not permit large holdings, there is also the problem of land fragmentation in most states in India. The consolidated large chunks of land are available with the Forest Department only. There is a case here for reconsidering the whole framework of land ceiling and land consolidation laws in the context of private forestry.

Chapter Ten

LEGAL FRAMEWORK OF FORESTRY ON COMMON LANDS IN HARYANA

Legal Aspects of Rehabilitation of the Common Lands in Aravali Hills

Terms of Reference

It was decided to seek opinion on the following major legal issues: land tenure, arrangement of rights, legal status of the village level committees working on the project, methods of legally securing the composition or constitution of such committees and methods of securing the benefits to the right holders.

The consultancy period for the work was one month, which included time for field work, discussions, writing and submission of the report.

Execution of the Terms

For the preparation of this Report all the relevant Acts and case laws were studied; project sites in Narnaul and Gurgaon districts were visited; discussions were held with heads of seven Panchayats in Narnaul and one of Kaul Gaon in Gurgaon district, along with the villagers, Committee members, the DFO, SDO, BDO and Patwaris of these districts. Discussions were also held with the CCF at Gurgaon and other Project officials, as well as with other consultants on the Project. This chapter is an outcome of these studies, field work and discussions.

Project Plan

The objectives of the project are to restore the environment and productivity of the common (panchayat) lands of selected villages in order to improve the income and living conditions of the poor and landless people of the village communities. The proposed project area covers common lands of 293 villages

bordering the Aravali Hills in the districts of Faridabad, Gurgaon, Mohindergarh and Bhawani. Common lands of these villages represent 14 per cent of the total area belonging to the villages.

Legal Needs of the Project

As in the case of any other land based work, the physical needs of the project are twofold. First, availability of land which is not used for any other purpose than those needed to fulfill the objectives of the project, and second, people to work on them. The social needs are that these people must form a coherent group for administration, work and benefit sharing purposes. Functionally, the groups must also involve those who actually do or will work on such lands and play an important role in decision making. The legal needs are correlated to these physical, social and functional needs.

a) Physical Needs

As regards the legal needs concerning the physical aspects, the first requirement is that the tenure over the available lands must be clear. Land tenure issue is not a major problem in Haryana. The common land, as Panchayat lands, are clearly delimited under the Punjab Gram Panchayat Act, 1952, as well as the Punjab Village Common Lands (Regulation) Act, 1961. (See Appendix - 1 and 2). These lands are vested in the Panchayats, under these Acts, and their title of ownership is also clear due to the fact that mutation of all such lands has been completed in favour of the Panchayats, vide Revenue Department Notification of 11.2.92 of the Government of Haryana. In terms of availability of these lands for afforestation, however, there are two minor problems. The first is the fact that these same lands are also to be used for mining purposes, since they have mineral deposits in them, and the second concerns the fact that the better part of these common lands being used for agricultural purposes, only the most denuded parts are being given out by the Panchayats for tree plantation purposes. We shall see the details of these issues in the next section. Despite these minor problems there still

remains plenty of waste common lands available for the project purposes.

b) Social Needs

With respect to the social need of a coherent group for work, the legal need is that law must define such groups clearly and give them full legal status. Under the present legal regime the social groups thus demarcated are the panchayats or the gram sabhas, under the Punjab Gram Panchayat Act. For a variety of reasons these groups are not being used for the project purposes. Instead, village level committees are being constituted to take up the task. This poses many legal problems, the details of which we shall discuss in what follows.

c) Functional Needs

As regards functional requirements the existing legal framework is contrary to the ground reality. The people who, by and large, work on the common lands or who directly benefit from them, namely women, do not play any major role in the decision making process, as far as land use is concerned. Neither the Punjab Gram Panchayat Act nor the Punjab Village Common Lands Act secures the participation of women in decision making. These roles are monopolised by men who form members of the Panchayat. The recent amendements to the Panchayat Act, such as through Haryana Govt. Gazette (Extraordinary) of Feb. 11th, 1992, which have been passed specially to facilitate the project, also do not ensure active participation of women. (Appendix - 3)

Major Problem Issues

The most basic legal problem with the whole enterprise is that it sets up a triadic relationship for the execution of the project which is not legally consistent. The asset on which work is to be done, namely land, belongs to one party, the panchayats, and hence also the ultimate power to decide on land use and benefit sharing; (vide Sections 4 (1), (2) of the Punjab Village Common Lands Act, 1961. The administrative

control over this asset, in terms of external inputs, belongs to another party, the BDO, SDO and the Collector; (through provisos 7(1), (2), (3), (4) of the Punjab Village Common Lands (Regulation) Haryana Amendment Act, 1991. The work to improve this asset, however, has been entrusted to a third party, who has neither the right nor legal control over the property, namely to the Forest Department; (through no legal sanction but the Haryana Government's resolution to undertake this project through the Forest Department.) One may argue that there are various historical reasons as to how such a situation has come about. But the fact remains that law has its own logic, and unless this legal contradiction is somehow resolved the execution of the project is going to be extremely difficult. Evidently, such a basic legal inconsistency should have been taken note of at the project design period itself and resolutions sought. Nonetheless, one may still be able to tackle the issues partly, if not wholly, by measures that the recommendations in this Report will suggest. Let us turn, in the meantime, to note the other legal problems which too need to be addressed in the course of the project.

a) Physical Problems

As concerns land availability for the purposes of afforestation in this project, the Panchayat has the power to pass a resolution to allow a legally bona fide agency to enter into an agreement for such purposes; (in accordance with power provided through section 22 (1) of the Punjab Gram Panchayat Act, 1952, read along with the Punjab Village Common Lands (Regulation) Rules, 1964, sections 3, (1), (2), (vii), 5, 12 92) (a) (Appendix-4). However, these sections do not mention what type of land, within the common lands vested in the Panchayats can be or should be used for the purposes of afforestation, or which can be set aside under an agreement. In other words, they do not define land use rules for common lands. Section 3 (2) (xxv) of the Punjab Common Lands Rules, 1964, however, gives the Panchayats the powers to lease out the common lands for agricultural and cultivation purposes. Other relevant sections of the Act prescribe the procedures

under which such common lands can be leased for a period of one or two years. These rules, therefore, do allow the possibility of alternate land use practices.

The net effect of the operation of these two types of rules has been that under the resolutions passed by the Panchayats for afforestation purposes under the project, field observations show that semi-cultivable common lands have been retained for agricultural leasing by the Panchayats and the more denuded areas have been handed over to the Forest Department for the project purposes. Now at the administrative level, and an abstract level which assumes that all common lands are used by the villagers in the same way, this arrangement would seem rational. But if one looks at the actual social and physical facts, the method achieves the opposite of what it intends.

The common lands have served the fuel, fodder and some timber needs of the villagers. The fulfillment of all such needs is actually the task of women. They have been traditionally gathering the shrubs and bushes for the household needs from the more denuded parts of the common lands, since the semi-cultivable lands have been leased out for agricultural purposes. In fencing off the more denuded common areas, close to the villages, for the project purposes, greater hardship is faced by women in their daily chores of fuel and fodder gathering. They have now to go not only to further distances, increasing their labour inputs, but also take greater personal risks in undertaking the job. This, evidently, is an unintended consequence of the project, besides being contrary to the basic objectives. What is required is that, since the law leaves open decisions concerning land use, the project authorities, while taking up the commonlands for afforestation, should not take up merely any land that the Panchayat sets aside through the resolutions, but having carried out a sociological investigation into the social practices in land use, set up criteria for what area of common lands can the panchayat set aside for social or physical fencing for the project areas. Involvement of women in selection of the common lands for afforestation purposes is

more likely to facilitate and bring about more rational decisions about such land use.

The other problem concerning land use relates to mining of common lands. Under the Punjab Land Conservation Act the officials of the Revenue Department have the powers to stop or regulate mining, but the powers under the Mines Act are overriding. Mining of common lands, therefore, essentially becomes a legal policy issue which needs to be taken up at the State Government level. At this level, the government must decide whether ecological preservation and regeneration of the Aravali Hills is a priority issue or the revenue earned for the state exchequer through mining leases. It must be noted that unlike the mining laws of some other countries, neither do such laws in India, nor the Land Conservation or Soil Conservation laws prescribe measures for preservation of top soil or compensatory afforestation programmes. Rules and guidelines under the Forest Conservation Act, 1980, do mandate compensatory afforestation schemes for new mining projects, but since the common lands under the project do not come under the Forest Conservation Act or other forest laws, such provisions cannot be applied to these panchayat lands.

b) Social Problems

As noted, the only legally stable social structure at the village level are the panchayats. The Forest Department, Government of Haryana, has come up with tentative models of 'Village Level Committees' which shall form the operative structures for the purposes of the project (Appendix -6). The assumption is that smaller committees laden with the specific job of undertaking the assigned tasks will be administratively easier to handle than the larger panchayat bodies, which are already entangled in the political process and have a number of chores besides the specific one for land development. True as these may be for administrative purposes, there are some legal problems in the strategy that need to be addressed.

As noted earlier; first, the Forest Department has no legal locus standi to impose such committees on the panchayats or

the village people. Legally this can be done only by the panchayats themselves, the Revenue Department or the Governor. If the Forest Department, on its own, passes a notification for the formation of such committees, in the eye of the law these will be mere administrative adjuncts of the Department itself, and will not have an independent legal status. As such, they can neither generate nor keep village funds independently, nor be capable of rural credits, bank loans or getting other developmental funds from the government. This non-statutory status of the committees raises various legal questions about their social relationship with the panchayat bodies.

First, the Committees cannot dictate terms to the Panchayats for benefit sharing from the commons. The lands are vested in the Panchayat and they have the powers for distribution, and moreover since all villagers have rights to share from the commons, under the law, the Committee cannot exclude benefits to the free riders or to those who are deemed to have worked less than the work allotted to them.

Second, once the benefits from these commons become substantial there is likelihood of conflict of interest, as has been witnessed in other states implementing similar schemes on common lands. Under this scheme, of working through the committees, there is no legal mechanism available for resolution of conflicts.

c) Functional Problems

The major problem, as noted, is that those who have the prime responsibility of using the resources from the commons for household purposes, namely women, do not have any legal power to decide either on land use, selection of species, benefit sharing rules or selection of members participating in the project. Although law can necessitate this, it cannot ensure the participation of women in such decision making processes. This is partly because law has to be backed by the social practices and partly because the implementation of law requires a mechanism for administration and enforcement

which cannot be provided for various reasons. The Panchayati Act of 1993, recently passed by the Parliament, mandates upto 30 per cent participation of women and Scheduled Castes and Tribes members in the Panchayat Committee. But despite this the fact that the participation will not remain merely *de jure* but *translate itself into de facto* representation cannot be guaranteed by law alone. Entrenched social practices or motivation and incentives are required. Field observations reveal that unlike other states, even the recent administrative practices of working through 'Mahila Mandals' or 'Self Employment' associations, are either nascent or absent in the operational areas. There are no non-government organisations in the area which have been working or can work towards organizing women groups. This means that if participation of women is to be ensured there has to be heavy reliance on the enforcement of regulatory measures for the projects. While discussing the legal alternatives, we shall explore how this can be achieved to some extent.

The Existing Legal Framework And Policy

Although the present afforestation and regeneration of common lands project can be viewed as a new experiment from the point of view of the Haryana Forest Department or the funding agencies, it is part of a continuing process from the perspective of the villagers. Moreover, from this perspective it cannot be seen in isolation. It is one among the many programmes going on in the villages. The legal policy and framework, similarly, cannot be put out of the historical context, and considering that many programmes are functioning at the village level at the same time, this policy and framework is expected to serve the purposes of all these projects simultaneously. It cannot be framed differently for each project or programme. This requires that there be a general legal policy for rural development within which the various programmes fit into an integral whole. This policy must also, evidently, take account of the larger historical processes in the villages. If the present project is to be situated within this larger legal policy for rural development, it is

important to be at least aware of this context and to understand its larger ideological perspective so that one may learn something from the history and not commit the same or similar mistakes. Since there are two basic elements attempted to be brought together in the present project, namely forests and a rural institution which will take care of such forests, it will be important to understand the historical and legal background of both these aspects for seeking appropriate alternatives for the project. Let us turn to review the issues concerning rural institutions first.

a) Legal Framework for Local Institutions

The basic requirement of any democratic society is the existence of strong, decentralized local self government systems, which can control the use of resources for the good of the local communities. A characteristic feature of the agrarian set-up in India has been the existence of village panchayats functioning as local self governments as an integral part of the rural communities, since time immemorial. Realizing this, and also the requirements of a democracy, the founders of the Indian Constitution have made it a duty of all states to sustain and encourage the functioning of the panchayati system in all rural areas (through Article 40 of the Constitution); they have also mandated that the common material goods of the villages be used for the common good (through Articles 39 (b) and (c) of the Constitution.) These are the most general and basic guidelines defining the legal policy as regards village level community set-ups. The enactment of the Panchayati Act by the Parliament (in April, 1993) is in keeping with the same ideology. Now, unless one has a very good reason to doubt the theory of democracy embodied in the Indian Constitution, or a different reason to suggest why the material good of the villages cannot be best used to serve the needs of the local people or by the local people, one will need a very strong reason to support or set up alternative types of village-level community structures. We will consider the question of the 'local material good' (namely forests) separately. Let us trace the policy behind the democratic structure first.

The earlier Hindu and Muslim kings did not interfere with the working of the village panchayats. Under the British, however, the role of the panchayats went on decreasing. They infused their own notions on village life through administrative and legal measures. The direct revenue settlements with individuals, instead of the panchayats, led to the zamindari and jagir systems, which ultimately resulted in the feudal rich dominating the panchayats. Nonetheless, the British too felt the need to maintain a system of rural self-government for smooth collection of taxes. It was with this end in view that the Royal Commission was appointed in 1906. The Commission, *inter alia*, recommended the formation of village Panchayats at the village level and sub-district boards in each taluka and tehsil. The Commission also favoured the retention of local bodies at the district level. In 1919, the Government of India Act brought the subject of 'local self-government' within the purview of the province. (The 1993 Act brings it within the purview of the centre). In 1919, consequently, various provinces passed the Village Panchayat Acts in order to revive the panchayati system. However, under these Acts the members of these panchayats were mostly nominated by the government and they did not have a democratic character.

After Independence, the zamindari and Jagir (feudal) systems were first done away with. In light of Article 40 of the Constitution, the Panchayat Acts were re-enacted, assigning important functions and resources to the panchayats so as to make them self-sufficient units for development of the villages. The Punjab Gram Panchayat Act, which applies to Haryana, was enacted in 1952, with the same motivation. In the 1950s Community Development and National Extension Service Blocks were launched. It was decided by the National Development Council, in its 8th Meeting, that a Study Team for community Development and National Extension Service should carry out special investigation into reorganization of the District Administration. Accordingly, a Committee on Plan Projects was appointed to study the working of the Community Development programmes. It was decided in 1957 by this Committee that such community development and

extension works could not invoke popular initiatives. It, therefore, recommended the establishment of statutory 'Panchayati Raj System' and devolution to Panchayat of necessary resources, powers and authority to plan and implement community development programmes.

It is in the light of these problems, of zamindari (feudal landlordism), the state's inability to motivate or impose community development programmes and the lack of control of resources by local communities, that the Punjab Gram Panchayat Act or the Punjab Village Common Lands (Regulation) Rules, can be understood. The Punjab Gram Panchayat Act states :

- (16). It shall be the duty of the Gram Sachiv to : (w) plan and preserve trees (on common lands).
- 22. A Gram Panchayat may by general order to be published in the manner prescribed:
 - (i) regulate such matters as may be necessary for the general protection of standing crops and trees on common lands and the planting of such trees.
- 80. There shall be a (Gram fund) for each Panchayat and the same shall be utilized for carrying out the duties and obligations imposed on the Panchayats.

The Punjab Village Common Lands (regulation) Act, similarly prescribes:

- (2) The Panchayat may make use of the land in shamilat deh (common lands) vested in it under the Act, either itself or through another, for any or more of the following purposes:
 - (vii) Tree plantation or any other purpose related to forestry.
- (14) Utilization of the income from the shamilat deh (Sections 9 and 15 (2) (f) of the Act) :

The income derived by a Panchayat from the occupation of land in shamilat deh vested in it shall be utilized for the benefit of (all) inhabitants of the village, as laid down in the Punjab Gram Panchayat Act, 1952, and for the improvement, maintenance and management of the shamilat deh.

However, as is well known, the panchayats have not been able to perform these functions for the benefit of the poorer sections of the rural societies. This is partly because the evils of the feudal landlord system have not been eradicated as yet. The rural rich usurp most of the benefits from common property resources and state sponsored development programmes. It is also true that the vicious aspects of external vested interests in the village resources have led to a negative politicization of the panchayats, whereby they have begun to work more for the benefits of these external agents than for the rural poor. These two basic problems have led many critics of the panchayati system, including government agencies, to not only downgrade the system but also often totally write them off as far as externally aided development programmes are concerned. Such attitudes about the panchayats have been reinforced by myopic governmental reports, such as the Ashok Mehta "Report on Panchayati Raj Institutions" (1978), which described the system as corrupt, inefficient and politically vitiated. Consequently, the lukewarm attitude of the political elite at higher levels towards strengthening the grassroot organizations has led to further weakening of the panchayati system, and the administration, on the other hand, has continued to sponsor rural development programmes through ad hoc, non-statutory and temporary 'committees' after 'committees', be it for forests, fisheries, irrigation, agriculture or animal husbandry.

If the aim of village development projects is to improve the rural poor or to utilize their labour for improvement of their ecology, there are three basic reasons why such lop-sided and myopic understanding of village institutions cannot lead to the achievement of the goals. First, one has to pose to oneself the larger basic national or Constitutional legal policy question : is local, decentralized, elected self-government necessary or not for democratization of the country? If the answer is in the affirmative there is no escape from supporting and encouraging this type of self-governance, whether one may call such governments panchayats or anything else. Subversion or weakening of such local governments amounts to subversion

of both democracy and the Constitutional directives. Serious efforts to meet these two demands would necessitate continuous review and amendment of the panchayat laws and to improve the system as resource use, technology and economic practices have changed. Since Independence, no effort has been made to improve the panchayati Acts or institution. After enacting the panchayati laws in the 1950s, attention has been totally turned away from these laws, specially from the point of view of resource use and management. Even the 1993, panchayati law does not address these basic resources use and control issues. The state has not provided the panchayats even funds for regular elections or work, leave alone for development works. In many states panchayat elections have been held at intervals of 10 or 20 years and the institution has been allowed to languish. At the end of this if the local self-governments do not prove to be efficient, it is the state itself which is to blame and not the rural people.

The second reason why the existing critical views of rural self-government institutions are myopic and lop-sided is that they confuse the effect with the cause. The fact that the panchayati institutions have become corrupt, politicized, inefficient etc. is the effect. The cause is that the external agencies, which includes the government agencies, have been one of the biggest exploiters of rural resources : forests, mines and minerals, water etc. A strong local self-government would evidently be an impediment to such exploitations. The political and administrative processes have, therefore, ensured that the panchayats continue to serve the interests of the external agents more than those of the local people. The facilitation of this process demands corruption. In short, the governments themselves are to blame for the sorry state of affairs the panchayati institutions are in.

The third reason for the critical myopic view of the local self-governing panchayati institutions arises from another cause and effect confusion about which the state is not willing to be self-critical. The inability and lack of interest of the rural people in the development or maintenance of the local

resources arises from two sources; first they know that the benefits of the existing or regenerated natural resources will be usurped by external agents, and second that they will not be given any control over the external funds that come for the development or maintenance of such resources. The average fund of panchayats under the "panchayat funds" in India is about Rs.2000/-, while the development funds available with even the Block Development Officers goes into lakhs of rupees. The breakdown of the rural skills in development of local resources is thus the effect. The cause is the administrative remote control of the funds for such developmental work. As noted for every development work the state agencies set up ad hoc, non-statutory, administrative committees. This is not something that we suddenly face in forestry programmes under this project. The advantage of setting up such committees, without any legal powers, is that the state agencies can maintain a remote control on the developmental funds available. The major beneficiaries of such funds, therefore, have been the remote controllers themselves, and not the rural people. They get only the trickle down shares. About eighty per cent of the funds available for social forestry, for instance, has been spent on setting up the Social Forestry Departments, the houses, vehicles, phone lines, offices etc. for the employees, most of whom are not inhabitants of the rural areas. This is true not only for social forestry but for other rural based projects too. Such skewed 'development' work and the disparity in the priorities of the projects (in benefitting the external agents first) are very visible to the rural people. As regards participation in the 'committee's' work, consider the point from the rural point of view. Besides the fact that there are a multiplicity of such committees at the village level of which the rural person is being simultaneously asked to be a member. The trickle down advantage of the 'development' projects to the rural people is limited to wages and temporary job opportunities. The various 'committees' from his or her point of view, hence, are different wage or temporary job opportunities. The rational choice in such a situation, evidently, would be to choose that opportunity which is immediately economically most beneficial.

Field observations and discussions with the rural people in this project too made it apparent that they have been 'participating' in the project because the best wages are available for the work (plantation), and that too in seasons when earning from agricultural labour is not readily available. Given a more paying task in the village, they would be quite willing to quit one forestry committee and join the other.

It is not as if the legislators of the panchayat Acts have not realized that special functional committees or groups will be required for special tasks at the village level. Panchayati Acts of every state provide not only the legal framework for such functional committees, but also special powers to the panchayats to regulate the work and income of such groups. But the logic of external remote control and strategies for first helping the external agents in rural development programmes, has ensured that these provisions of the panchayat Acts have remained totally unutilized. To illustrate, one may note the following section of the Punjab Gram Panchayat Act :

Section 33

- (1) A Gram Panchayat shall for the discharge of its administrative functions and other duties appoint Functional Sub-Committees and Local Committees.
- (2) The Functional Sub-Committee shall strengthen the Panchayats by assisting them with suggestions at the stage of planning and help in the execution of development work.
- (3) In case a Sabha area is constituted of more than one village, each village shall have a Local Committee consisting of panchayats of the village and members of the village, which will look after the development of the village and will be considered as Functional Sub-Committees for all purposes.

It would be of interest to note that the Gazetted Notification of the Haryana Government, of February 11, 1992, to amend the Punjab Village common Lands (Regulation) Haryana Amendment Act, of 1991, instead of strengthening the local

self-governments, shifts some of the controls over the common lands to the external administrative agencies (See Appendix - 3). The model Agreement for raising plantations on Lands, put up by the Haryana Government (an Agreement between the Governor and the Panchayats) (See Appendix-6) also relies heavily on official administrative controls, and does not aid in furthering the Constitutional legal policy of supporting and improving local self-governance regimes. While considering the legal alternatives we shall explore how the Constitutional mandate can be better achieved within the local policy of self-governance. Having reviewed the institutional policy issues let us turn now to briefly outline the legal policy behind the second element involved in the project, namely forestry, in its historical context.

b) Legal Framework for Forestry Practices

Forests have played an important role in village non-cash economies, providing them a range of housing, fuel, fodder and timber resources. The decline of the village level institutions for managing such resources is directly correlated with the vanishing control over such resources. Through the colonial period and in the last forty years after Independence there has been a continuous tussle between the state and the rural communities for control over the forest resources. The commercial value of the forests has lured all external agencies to use the state monopoly over forests to deny the benefits of such resources to the villagers. Much of the 'reserved' and 'protected' forests in control of the Forest Department at present were once village forests or private forests from which the local inhabitants benefitted in various ways. The history of forest legislation from the first 1865 Forest Act to the 1927 Act is nothing but a long story of the use of the forest resources by external (non-rural) agents or agencies. The Indian Forest (Haryana) Act of 1973, is nothing but an embodiment of the 1927 Forest Act. The project areas, which are barren or denuded now, were thickly forested areas, as recently as till fifty years ago, with tigers, leopards, buffaloes and a hoard of other wildlife living in them. The forestry practices enforced

through such laws have alienated not only the local management systems but also the people from any interest in forestry.

In so far as plan policies are concerned, the First and the Second Five Year Plans laid emphasis on the rehabilitation of degraded forests. The Third Plan proposed taking up village and extension forestry by Panchayat Samitis and Panchayats. The Fourth Plan formulated the programme for regeneration of wastelands and shamilats. In 1976 the National Commission on Agriculture recommended a new classification of all forest lands into : (a) protection forests, (b) production forests, and (c) social forests. The last type were supposed to cover the village common lands. The Seventh and Eighth Plan have included ecological security amongst other concerns. It is important to note, however, that despite these Five year Plans and the new Forest Policy of 1988, there has been no change in the forest laws whatsoever. The 1927 forest law still continues to implement the policy embodied in it. The ground level reality, therefore, as far as people's relationship with organized forestry is concerned, continues to be the one carried on through the colonial period. They continue to believe that the eventual beneficiaries of such activities will be outsiders, that there will be no legal security for rights over the produce of their labour and that the major decisions will be made by the government officials. The recent social forestry or common land forestry notifications (or model Agreements) do not aid in changing these views. A radical attitudinal change is necessary if the local people's involvement in forestry is to go beyond selling their labour. This conviction cannot be brought about without parallel changes in the forest laws.

There are two sections in the Indian Forest Act, including the one applicable to Haryana, which can directly relate to forestry work on common lands; namely sections 35A and 37 (1) and (2), which concern village forests and forest lands not being the property of the government (i.e. the state government). (See Appendix - 5). These sections allow for the participation of the Forest Department in the management of such village forests. However, hitherto, these sections have been used only

in a negative way, that is to take up the village forests from villagers for official management and then eventually proclaiming them to be state owned through notifications through other sections of the Forest Act. However, there is no reason why these provisions should be used only in this negative way. It is legally possible to use them in ways which prevents the misuse of these provisions to usurp the village lands, and takes into account the villagers' genuine apprehensions about the use of these provisions. We shall see the details of these in considering the legal alternatives available for the project.

Legal Alternatives Available

The first basic problem concerns the triadic relationship, mentioned earlier, where the ownership of common lands is vested in one agency (the panchayats), the authority to regulate its use in another (the Revenue Department) and the task assigned to a third party (the Forest Department). There are at least three types of legal alternatives available to resolve this conflict, in which all the three aspects are brought together in one agency, the Forest Department, the Revenue Department or the Panchayats, and the other two play advisory or extension work roles.

The ownership, authority and work can be brought together into the Forest Department in the following ways :

- i) With the approval of the State Government, the Forest Department notifies the common lands under section 4 of the Indian Forest (Haryana) Act, 1973, and then settles the usufruct rights in favour of the villagers.
- ii) The Forest Department notifies the areas as 'Village Forests' under sections 28 and 29 of the same Act, and settles all rights to timber, fodder, fuel etc. in favour of the villagers.
- iii) The Forest Department takes up the management of the common lands under section 37 and 38 of the Forest Act for a period of 3 to 12 years, and declares the area to be

protected as reserved forests, giving partial usufruct rights to the right holders.

In all three cases the villager's free access to the common lands would be debarred, and the Forest Department would be dealing with the right holders (villagers) directly and not the panchayats. Also, the provisions of the Forest Conservation Act, 1980, would apply, such that if the panchayats or the Forest Department wish to use the land for any non-forestry purpose, as defined under the Act, the permission of the Central Government would be necessary. This would include leasing out the lands for mining purposes.

As regards ownership, authority and work by the Revenue Department, the following legal situation obtains:

- i) Section 5 (5), (6), of the Punjab Common Lands (Regulation) Act, 1961, authorizes the State Government to take over the total management of common lands, and regulate their utilisation through the Revenue Department. The mentioned sub-section (6) mandates that the income earned through such management should be credited to the Gram Fund of the concerned panchayats. (See Appendix - 2). Section 15 further empowers the Government to make rules for the **management of such common lands**.
- ii) The February 11, 1992, Notification, which brought about the Punjab Village Common Land (Regulation) Haryana Act, 1991, vastly increases the powers of the Revenue officials for the management of common lands, although it does not concern itself with ownership of such lands. (See Appendix -3).

In relationship to the panchayats, the Punjab Gram Panchayat Act, 1952, already vests the powers with the panchayats. The ownership is further consolidated through the Punjab Common Lands (Regulation) Act, 1961. The authority to fully regulate the use of lands, as noted, is somewhat mitigated through the 1991 amendment to the Village Common Lands Act. Unlike the situation with the Forest Department or the Revenue Department, no fresh notification or legal action,

in terms of taking over or settling of rights, is required with reference to these issues.

With regard to work concerning forestry, the Forest Department has all the expertise, the Revenue Department has only a little of it, through its rural development programmes, which include tree plantation, but it has good experience in extension work. The Panchayats have neither the expertise nor experience in extension work.

The model Agreement (Appendix - 6), which attempts to resolve some of the problems of this triadic conflict, will, presumably, be passed as a notification by the Forest Department. Besides the fact that this model does not address the question of the composition of the village level committees, or how women participation can be ensured in decision making, it does not make provisions for any statutory body which will have an independent legal status and hence the right to bargain with any outside agency. It involves the panchayats as a whole, who already have overriding rights through the Panchayat Act. As mentioned, the Forest Department does not have a *locus standi*, vis-a-vis the panchayats, to legally bind them to a particular performance. If the panchayats decide to use the income from common lands for any non-forestry purpose the Forest Department cannot stop them. Nor is the 'resolution' passed by one panchayat binding on the next, as far as use of the common lands is concerned. Evidently, a more secure legal strategy would have to be adopted to accomplish the desired objectives.

If we are to focus on the legal alternatives available from the point of view of physical, social and functional aspects specifically, the situation is as follows:

Taking up the physical or land use alternatives first, the Panchayat Act, as noted, having vested the common lands in the panchayats, does not go further to specify land use procedures. The existing practice is that the common land closest to the village is used for agriculture, (where it is possible, and this is true in many project areas) and is given out on annual lease to villagers; the land adjoining such

agricultural land has been given to the (Forest Department) Project Authorities for afforestation purposes; and the most distant common lands are left barren. Such lands are neither fit for agriculture nor for afforestation and even the Forest Department is hardly eager to undertake the projects on such lands. It is the arid-agricultural land however that supplies most of the fuel and fodder and women work and cultivate it for these specific purposes. If fuel and fodder supply to the villages is to be increased, the project must address itself to these lands too. This, evidently concerns the work plan for each project unit. Since there are no legal rules for this under the Panchayat Act, the rules set under the notification for the project must necessitate making work plans in collaboration with women (wherein their decisions are binding) and appropriate land use considerations.

As regards the social and functional alternatives for local institutions, as we have noted, there are no provisions for this under the forest laws. The Panchayat Act and the Village Common Lands Rules, however, provide full scope for such institutions. Moreover, there is a need to support and encourage local self-governance, rather than subvert them through putting up ad hoc, non-statutory bodies. If there had been a strong non-government organisations or people's movement in the area, there would have been good reasons to consider the alternatives of forming non-state statutory bodies, such as Societies under the Societies Registration Act or Cooperatives under the Cooperatives Act. In the absence of a people's support group, registering societies, by requesting or forcing them to do so, from the top, is just as bad as forming non-statutory committees in the same way. If the formation of committees has to come from the top (administration) then one may as well form statutory committees so that they have genuine legal rights and powers and have a long standing legal life (as the panchayats have) rather than administrative lives, which depend upon the whim or fancy of the authorities, or the available project funds, and the duration of the project.

A related issue is the use of development funds by committees or groups working for the project, and the use of

those funds which are outcomes of the project. The existing Panchayat Act does not necessitate use of the Gram Funds for forestry purposes, nor does it mandate that the outcomes of such work must be reinvested in forestry. The ad-hoc administrative committee, on the other hand, does not guarantee appropriate long term use of the funds for rural development, nor is it conducive to the learning experience of the panchayats. The funds, by and large, are controlled by the administration. The project procedure, therefore, makes the village people more dependent on the bureaucracy, rather than generate the requisite community resources management system which will have the know-how to actually manage the funds for local resource regeneration and use.

In the next section of this Report we shall consider how some of the major and minor problems mentioned here can be tackled without going in for major law reform. Evidently, the ideal situation would require that given the urgent needs of ecology, equity and economy the state should go in for appropriate reform of the Panchayat Act, the Forest Act, the Common Lands act and other cognate laws, such as the mining laws. However, given the political contingencies and vested economic interests, such an expectation is utopian. However, it would not in the least be utopian or idealistic to believe that even within the given legal framework it is possible to move towards partial achievement of some of the goals. It requires appropriate exploitation of the better aspects of the legal regime, and the Forest Department is well suited to do this.

Recommendations

a) Legal Options

It would be evident from the above discussions that forestry in rural areas is not a matter of mere tree plantation. If local participation is required it involves building a sustainable institution, alongwith sustainable ecology. And local participation is a must, both for the labour input for plantation and for the protection of trees. Since the local institutions have been exploited alongwith the vegetation, both are in an equally

denuded state. If the project is to succeed, the task before the Forest Department, or anyone who takes up the task, necessarily involves rehabilitating the local management system along with the land. One cannot be done without the other. This point is being emphasized because it has been observed that in most forestry projects, plantation takes priority over institution building. In fact the whole project is target-driven, as to how much land has been covered and how many saplings planted. This is the major reason for the poor performance of social forestry projects in India. The criteria for the success of a project needs to be totally changed, in terms of legally stable institution building parameters. A discussion of how these parameters can be quantified or ranked is another task. Given the fact that the local institutional aspects, such as concerning management of resources, people and funds, all of which concerns law, are just as important as the economics and technology of land regeneration, let us turn to prioritize the legal measures that can be recommended.

The first step to overcome the triadic conflict problem is to try to assimilate as many functions and powers within one agency as possible.

Although, ideally, notification under section 4 or section 38 of the Indian Forest (Haryana) Act, 1973, would give the Forest Department the requisite authority to carry out the necessary functions for the project, along with assigning the rights to the villagers, this strategy is not recommended for two reasons. First, the Department already has a lot of reserved and protected forest lands which it has not been able to afforest as yet, and adding more land to the category does not warrant success; and second, as noted earlier, the process involves alienation of people from such lands, which too has proved counter-productive.

The Department may consider taking up the management of common lands, as 'Village Forests' under section 29 of the Forest Act, or for a short duration under section 35A. The success of this method would demand the following: a) winning over the confidence of the villagers that the land will

actually be returned to them and that they would be the actual beneficiaries of the forests after the gestation period. Although the latter can be written in the contract that the Department enters into with the panchayats, the former is next to impossible, since the rural experience has been to the contrary. Moreover, this strategy too takes away the responsibility from the villagers to manage their own resources and creates dependence on the administration. In subsequent development programmes, where the people can depend upon their fuel and fodder resources and not on the bureaucracy, this legal strategy may work, but not in conditions where they are directly dependent upon the land. If the Department were to consider this legal strategy seriously, alternative arrangements need to be made in the project for the supply of fuel and fodder to the villagers while the mentioned legal provisions apply. This would, perhaps imply major changes in the project plan, and could have been considered at the project formulation or design stage.

b) Local Institution

In the given circumstances, the best option for the Forest Department is to go along with the spirit of the Punjab Gram Panchayat Act and the Village Common Lands Act, and to further consolidate the powers and functions of the panchayats. The Department should play an advisory and educative role, alongwith a clear legal mandate to take up some of the managerial roles (in relationship to work plans, plantation and arrangements for protection of the vegetation). Collaborative work with the Panchayati Department is, evidently, necessary. The manner in which this can be legally done is as follows.

c) Notification Required

The Forest Department does not need to pass a notification for setting up a forest committee. This should be done under the Punjab Gram Panchayat Act, section 33 (1), (2), (3). The notification could be by the Governor, the Revenue Department or the Panchayati Department, making it

obligatory for the panchayats to appoint functional Sub-Committees or Local Committees, designating them as 'Village Forest Committees.' The functions, powers, responsibilities and membership of such committees can be spelt out in the notification itself. This notification could also simultaneously, or subsequently, be passed as a part of the Panchayat Act itself, or as a rule under the Act, as has been done for the Village Common Land Act (e.g. the Feb. 1992, notification). There are precedents to these type of committees being set up under the Panchayat Acts. The Rajasthan Panchayat, for instance, set up functional sub-committees and local committees under the Act for purposes of primary education. It is a different matter that after setting up such committees in 1960, they have not been used, and instead parallel ad hoc committees were set up in the 1980s, for primary education. The reasons why these committees were not used in Rajasthan are the same as those for neglecting the panchayati system as a whole.

It must be noted that under this scheme no resolution need be passed by the panchayat to 'hand over' any portion of the common land to the Forest Department. The panchayat, along with the BOD, could decide on the areas they wish to use for the purpose and simply inform the Forest Department. The fact that the demarcated area is used for forestry only and not for any other purpose, would be an agreement between the panchayat (Sarpanch) and the BDO. It would also be their legal responsibility to ensure that the area on which they are asking the Forest Department to undertake the project is indeed common land area and free of legal problems of tenure or rights.

d) Village Forest Committees

The incentive for the villagers to be a part of the Village Forest Committee could be in terms of special employment by the Panchayat for the purpose. The Panchayats are empowered under the Act to employ the village members for specific purposes. The salary for the guard for protecting the area could also be provided in the same scheme through the panchayat. The protection guard would in this case be an employee of the

Panchayat (and not of the Forest Department as would be the case if the notification was passed by the Department, outside of the Panchayat Act). The notification should stipulate the composition of the Village Forest Committee, which could consist of 13 members, including the Sarpanch, as the head, the Block Development Officer, Forest Ranger, Forest Protection Guard and at least 6 women members, including representation from the Scheduled castes and Tribes.

e) Funds

Evidently, the funds for employment of protection guard and payment to the Forest Committee members would have to be arranged from the project funds. Such funds should be placed directly into the Gram Funds of the Panchayat, with strict stipulation for its use. The use of the funds as well as the arrangements for the work could be monitored by the BDO, as stipulated under the Village Common Lands (Amendment) Rules of 1992. The role of the Forest Department could be as presently envisaged, that is the Forest Ranger would be a member of the Village Forest committee, provided he is a resident of the same village or Panchayat. The notification would stipulate that in co-opting members for the Village Forest Committee, the Forest Ranger must necessarily be coopted. The Ranger would be an employee of the Forest Department.

As regards the funds generated from the project work, the notification could clearly stipulate that 20 per cent of the outcome must necessarily go into regeneration and maintenance of the village forest area on the common lands, 10 per cent to the Forest Department to meet the working costs, and 70 per cent into the general Gram Funds of the Panchayat for village developmental work. The distribution and use of the funds could be monitored by the BOD.

f) Role of the Forest Department

The Forest Department's role would be best utilized in the area of its expertise, namely, technical and managerial help,

notification should lay down that the work plans must be made in collaboration with the Forest Committees, making their participation mandatory. The work plans would be the Committee's undertaking and would be passed only on written agreement of the Committee.

Field observations show that the villagers want the Forest Department to take up all responsibility for management, monitoring and payment of funds (although not the common lands). This phenomenon seems to be caused by two factors. First, the villagers have become so used to the government doing things for them that they have lost all confidence to achieve anything by themselves. This is more a psychological aberration than an administrative one. Second, the villagers know that they have very little power, under the Panchayat Act to enforce sanctions against the erring members. Ideally, this requires amendment to the Panchayat Acts to re-institute the Gram Nyayalayas (courts) and policing power with the local governments (which were taken away or destroyed in the colonial period). In the given situation, however, the amended Village Common Land Act gives sufficient punitive and conflict resolution powers to the BDO and Collector to enforce the plans (See Appendix - 3). Nonetheless, some of these powers can be shared with the forest officers, in the interim project period, under the notification. For instance, the authority to start proceedings against an erring villager in the project area or of the Forest Committee, could be placed with the DFO also. Procedures for conflict resolution are specified in the Model Notification included herewith. These need to be the same as under the existing Panchayat and Village Common Acts, since the operational committee is a part of the Panchayat itself. The accompanying model notification, which is meant to be merely illustrative, deals with all other issues as well, discussed under these recommendations.

Model Notification

(N.B.: This notification has been drafted as an amendment to the Punjab Gram Panchayat Act, 1952, but the same material could be used for passing a notification/government order, with the same contents. It must be noted that the contents mentioned herein include only the essential features which must appear in the notification/law and is not intended to be exhaustive or comprehensive.)

HARAYANA GOVT. GAZ. (EXTRA) DT....., 1993

(PUSA dt....., 1913 SAKA)

PAR

LEGISLATIVE DEPARTMENT

Notification

The dt....., 1993

No. Leg. -/- The following Act of the Legislature of the state of Haryana received the assent of the President of India on the dt....., 1993, and is hereby published for general information.

Haryana Act No. : of 1993

THE PUNJAB GRAM PANCHAYAT (AMENDMENT) ACT,
1993

AN ACT to amend the Punjab Gram Panchayat Act, 1952, in its application to the state of Haryana.

BE it, enacted by the Legislature of the State of Haryana in the Forty Third Year of the Republic of India as follows :-

1. This Act may be called the Punjab Gram Panchayat (Haryana Amendment) Act, 1993.
2. After clause (3) of section 33 of the Punjab Gram Sabha Act, 1952 (hereinafter called the Principal Act) the following new section 33A shall be inserted, namely -
- 33A. The Panchayat shall appoint a Sub-Committee, called the Village Forest Committee (hereafter called the VFC) for forestry work on the common lands, vested in the Panchayat, under the Punjab Village Common Lands Act, 1961.
- (1) The VFC shall be constituted of 13 members, which will include the Sarpanch as head of the VFC, the Forest Ranger, or any person duly designated by the Divisional Forest Officer, the Block Development Officer (hereafter referred to as the BDO), 6 women residing in the village and who cultivate or use the common lands for fuel or fodder resources, and 4 coopted members at least one of whom belongs to the Scheduled Caste or Tribes category. One of

these members shall be designated as the Forest Protection Guard.

- (2) The VFC shall be authorized to execute an indenture on behalf of the Panchayat and execute any work under this indenture to be done by the Panchayat.
- (3) After concurrence of the concerned Block Development and Panchayat Officer, the VFC shall agree to enter into an agreement with the Divisional Forest Officer (hereinafter referred to as the DFO) for raising plantations of suitable species and other vegetation necessary for the ecological rehabilitation and maintenance of the common lands. The cost of all operations related to raising of the plantations shall be borne by the DFO.
- (4) The VFC affirms that the Panchayat has absolute rights and title to the common lands on which such forestry work is undertaken.
- (5) The DFO will determine the species and design the work plan in consultation with and written agreement of the VFC and raise the species at his own cost.
- (6) The DFO will be responsible for establishment and maintenance of the plantations for three years including the year of the formation of the VFC and shall intimate the VFC that the responsibilities as laid down in clause 7 shall commence.
- (7) The VFC shall -
 - a) Appoint the Forest Protection Guard.
 - b) Protect the plantation in the project area.
 - c) Maintain and manage the plantation after three years.
 - d) Refrain from using the land under plantations for any other purpose unless permitted by the DFO.
 - e) Accept and implement all directions of the DFO regarding protection, maintenance, management and harvesting of the plantations, and such directions shall be binding on the VFC.

- (8) The DFO or any other person duly authorized by him/her in this respect, shall be entitled to enter upon the said land for any purpose considered relevant to the purposes of forestry by the DFO.
- (9) The DFO shall provide training to the VFC members in the techniques of raising and maintaining nurseries and plantations on common lands.
- (10) The rights of the villagers to the forest produce from the common lands on which such plantation is being carried out shall be determined by the Panchayat, in concurrence with the concerned BDO and DFO, provided that such rights shall be exercised in accordance with the scheme for distribution and/or sale of the forest produce arrived at by the VFC with the assistance of the DFO.
- (11) All tools, plants stores machinery and material used in creation, maintenance, protection and management of plantations shall be the property of the Panchayat, and shall be supplied to the Panchayat, by the DFO, provided that for the first three years of the plantation period the use of all such property shall be regulated by the DFO concerned.
- (12) Where the VFC fails to carry out any of the directions issued by the DFO under this act or any of its obligation which the VFC is bound to discharge on account of the agreement entered into, the DFO shall carry out at his own discretion any or all of the work regarding protection, maintenance and management of the plantations at the cost of the VFC, provided a notice of 15 days is issued to the VFC to that effect and the VFC does not carry out or is unable to carry out the said direction. This cost will form a part of direct plantation expenditure for the purposes of recovery.
- (13) The DFO shall not be liable for any damage or loss occurring on the said land due to plantation or an act of god. Where such damages are seen to occur or there are reasonable grounds to believe that they may occur, the

Panchayat, in concurrence with the BDO, can terminate the plantation programme or project

- (14) All income earned from the major or minor forest produce on harvesting the plantations under this programme or project, the periodicity of which shall be decided by the DFO, shall be credited to the Panchayat Gram Fund, provided:
- a) 20 per cent of the income so earned is set aside for reinvestment in planting or forestry work on the said common lands;
 - b) 10 per cent of the income so earned is credited in the accounts of the Forest Department, as expenditure incurred on the work; and
 - c) 70 per cent of the remaining income is utilized for the general developmental work in the concerned villages, which would include salary for the Forest Protection Guard, out of the general Gram Funds, after the initial 3 years of the commencement of the project by the DFO.
- 15) It shall be the responsibility of the concerned BDO to ensure that the said income, governed by clause 14 (a), (b), (c) of section 33A of this Act is utilized, distributed and invested in the manner prescribed.
- 16) All disputes and differences arising out of or in any way concerning work under this section (33A) shall be dealt with in a manner prescribed under the Punjab Gram Panchayat Act, 1952 and the Punjab Village Common Lands (Regulation) Act, as amended in 1992.

APPENDIX - 1

THE PUNJAB GRAM PANCHAYAT ACT, 1952

Punjab Act No. 4 of 1953

AN

ACT

To provide for better Administration in the Rural Areas of
(Haryana) by Panchayats.

It is hereby enacted as follows :

CHAPTER I

Preliminary

1. (1) This Act may be called the Punjab Gram Panchayat Act, 1952.

[(2) It extends to the States of Punjab and Haryana and the Union Territory of Chandigarh and areas of the erstwhile State of Punjab transferred to the Union Territory of Himachal Pradesh under the Punjab Reorganisation Act, 1966 (Act 31 of 1966)]

3. In this act, unless the context otherwise requires, -

(d) "Common land" means land which is not in the exclusive use of any individual and has by usage, custom or prescription been reserved for the common purposes of village community or has been acquired for such purposes;

(o) "Sub-committee" means a Sub-committee appointed under section 33 of this Act;

[(pp) "village level functionary" in relation to a Sabha means any person performing his official duties in that Sabha area and includes patwari, school teacher, Secretary of a co-operative society and forest guard];

(h) income derived from common lands vested in the Panchayat under any law for the time being in force.

16. It shall be the duty of the Gram Sachiv to -

(v) assist Young Farmers' Club and Mahila Mandal in organising games and sports and execution of developmental, social and cultural works in the Sabha area;

(w) plan and preserve trees;

22. A Gram Panchayat may by general order to be published in the manner prescribed-

(i) regulate such matters as may be necessary for the general protection of standing crops and trees on common lands and the planting of such trees;

[33. (1) A Gram Panchayat shall for the discharge of its administrative functions and other duties appoint Functional Sub-Committee, and Local Committee.

(2) The Functional Sub-Committees shall strengthen the Panchayats by assisting them with suggestions at the stage of planning and helping in execution of development work.

(3) In case of the Sabha area being constituted of more than one village, each village shall have a Local Committee consisting of the Panches and co-opted members of the village, which will look after the development of the village and be considered as Functional Sub-Committee for all purposes.]

CHAPTER 7

FINANCE AND TAXATION

[80. There shall be a (Gram Fund); for each Panchayat and the same shall be utilised for carrying out the duties and obligations imposed on the Panchayat or any Committee thereof by this or any other enactment and for such other purposes of the Panchayat as the State Government may prescribe].

81. (1) The following money shall be credited to the Gram Fund-

- (f) the sale proceeds of all dust, dirt, dung or refuse collected by the servants of the Panchayats and dead bodies or animals not claimed by any person in accordance with any custom or usage and the trees and other produce of the land vested in the (Gram Panchayat);

APPENDIX -2

THE PUNJAB VILLAGE COMMONLANDS

(Regulation) Act, 1961

(As Applicable to Haryana)

2. Definitions- In this act, unless the context otherwise requires,-

(g) 'shamilat deh' includes-

- (1) lands described in the revenue records as (Shamilat deh or Charand) excluding abadi deh
- (2) shamilat tikkas
- (3) lands described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village
- (4) lands used or reserved for the benefit of village community including streets, lands, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under section 18 of the east Punjab Holdings (consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control

whereof vests in the State Government under section 23-A of the aforesaid Act

- [(4a) vacant land situated in abadi deh or gora deh not owned by any person;]
- (5) lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;
- [(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act.]

Explanation- Land entered in the column of ownership of record of rights of 'Jumla Malkan Wa Digar Haqdaran Arazi Hassab Rased', Jumla Malkan or 'Mushtarka Malkan' shall be shamilat deh within the meaning of this section.

‘COMMENTARY’

3. Right to graze - The members of a village community can graze their cattle when vahib-ul-arz entitles them to do so, 112F.r. 1918 48 Ind. Cas. 846.

SECTION 4

4. Vesting of rights in Panchayat and non-proprietors- (1) Notwithstanding anything to the contrary contained in any other law for the time being in force or in any court or other authority, all rights, title and interest whatever in the land -

- (a) which is included in the shamilat deh of any village and which has not vested in a Panchayat under the shamilat law shall at the commencement of this Act vest in a Panchayat constituted for the village, and where no such Panchayat has been constituted for the village, vest in the Panchayat on such date as a Panchayat having jurisdiction over that village is constituted.

- (b) which is situated within or outside the abadi deh of a village and which is under the house owned by a non-proprietor, shall, on the commencement of shamilat law, be deemed to have been vested in such non-proprietor.

(2) Any land which is vested in a Panchayat under the shamilat law shall be deemed to have been vested in the Panchayat under this Act.

(3) Nothing contained in clause (a) of sub-section (1) and in sub-section (2) shall affect or shall be deemed to have affected the -

- (i) existing rights, title or interests of persons, who though not entered as occupancy tenants in the revenue records are accorded a similar status by custom or otherwise, such as Dholdars, Bhondedars, Butimars, Basikhuopahus, Saunjidars Muqarrirdars.
- (ii) rights of persons who were in cultivating possession of shamilatdeh on the date of the commencement of the Punjab Village Common Lands (Regulation) Act, 1953 or the Pepsu Village Common Lands (Regulation) Act, 1954, and were in such cultivating possession for more than twelve years on such commencement without payment of rent or by payment of charges not exceeding the land revenue and cesses payable thereon.

SECTION 5

(5) Notwithstanding anything contained in this section, if in the opinion of the state Government, it is necessary to take over, to secure proper management for better utilization for the benefit of the inhabitants of the village concerning any shamilat deh, the Government may by notification take over the management of such shamilat deh for a period not exceeding twenty years.

(6) The income from the shamilat deh, the management of which is taken over under sub-section (5) after meeting all

charges relating or incidental to the management and utilization, shall be credited to the Gram Fund and utilised for the benefit of the inhabitants of the village concerned.

‘COMMENTARY’

6. Grazing rights of villagers are not saved- the panchayat is competent to utilise shamilat land as it likes. It is not necessary that what was grazing land out of shamilat deh previous to vesting in the Panchayat, must continue as such. The Panchayat got planted trees on grazing land and as a result thereof the grazing area of cattle was reduced. The land was described in revenue record as charand. The Shamilat deh including charand land vested in the Panchayat and the grazing rights of residents of the village were not saved for any purpose. *Khusi Puriv, State of Haryana, 1978 PLJ 78 1978 Rev. LR 43 (1991) 10 Punjab Legal Reports and Statutes 742.*

SECTION 15

15. Power to make rules- (1) The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for -

the principles of which and extent to and the manner in which the inhabitants of the village shall make use of the land vested or deemed to have been vested in a Panchayat and the terms and conditions on which the use and occupation of any such land is permitted.

(g) the purpose for which any such land may be given free of charge.

APPENDIX -3

HARYANA GOVT. GAZ.(EXTRA), FEB. 11, 1992 (MAGHA
22, 1913 SAKA)

PAR

LEGISLATIVE DEPARTMENT

Notification

The 11th February, 1992

No. Leg.9/92-The following Act of the Legislature of the State of Haryana received the assent of the President of India on 14th January, 1992, and is hereby published for general information-

Haryana Act No. 9 of 1992

THE PUNJAB VILLAGE COMMON LANDS
(REGULATION) HARYANA AMENDMENT ACT, 1991

AN

ACT

to amend the Punjab Village Common Land (Regulation) Act, 1961, in its application to the State of Haryana.

Short title Amendment of section 2 of Punjab Act 18 of 1961-

Be it enacted by the Legislature of the State of Haryana in the forty Second Year of the Republic of India as follows-

Short title Amendment of section 2 of Punjab Act 18 of 1961

1. This Act may be called the Punjab Village Common Land (Regulation) Haryana Amendment Act, 1991
2. In clause (g) of section 2 of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter called the principal Act)-
 - (a) for sub-clause (4), the following sub-clause shall be substituted, namely-

"(4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within

the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952, excluding lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23-A of the aforesaid Act."

- (b) the proviso to sub-clause (5) shall be omitted
- (c) after sub-clause (5), the following sub-clauses shall be inserted namely-
 - "(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23-A of the aforesaid Act."

HARYANA GOVT.GAZ. (EXTRA), FEB. 11, 1992
(MAGHA 22, 1913 SAKA)

Explanation- Lands entered in the column of ownership of record of rights as 'jumla Malkan Wa Digir Haqdaran Arazi Hassab Rased' 'Jumla Malkan' of 'Mushtarka Malkan' shall be shamilat deh within the meaning of this section",

3. For section 7 of the principal Act the following sections shall be substituted, namely-

- "7. (1) An Assistant Collector of the first grade jurisdiction in the village may, either moto or on an application made to him by a Panchayat or an inhabitant of the village or the Block Development, and Panchayat Officer or Social Education and Panchayat Officer, or any other Officer authorised by the Block Development

and Panchayat Officer, after making such summary enquiry as he may deem fit and in accordance with such procedure as may be prescribed, eject any person who is in wrongful or unauthorised possession of the land or other immovable property in the Shamilat deh of that village which vests in or is deemed to have been vested in the panchayat under this Act and put the panchayat in possession thereof and for so doing the Assistant Collector of the first grade may exercise the powers of a revenue court in relation to the execution of a decree for possession of land under the Punjab Tenancy Act, 188.

Provided that if in any such proceedings the question of title is raised and proved *prima facie* on the basis of documents that the question of title is really involved, the Assistant Collector of the first grade shall record a finding to that effect and first decide the question of title in the manner laid down hereinafter.

- (2) The Assistant Collector of the first grade shall by an order, in writing, require any person to pay a penalty, in respect of the land or other immovable property which was or has been in his wrongful or unauthorised possession, at a rate not less than five thousand rupees and not more than ten thousand rupees per hectare per annum, having regard to the benefit which could be derived from the land or other immovable property. If the penalty is not paid within the period of thirty days from the date of the order, the same shall be recoverable as arrears of land revenue.
- (3) The procedure for deciding the question of title under proviso to sub-section (1) shall be the same as laid down in the Code of Civil Procedure 1908.
- (4) If any person refuses to or fails to comply with the order of eviction passed under sub-section (1), within ten days of the date of such an order, the Assistant Collector of the first grade may use such force, including police force, as may be necessary for putting the panchayat in possession.

HARYANA GOVT GAZ. (EXTRA), FEB. 11, 1992 (MAGHA 22, 1913 SAKA)

- (5) Any person who is found in wrongful or unauthorised possession of the land or other immovable property in shamilat deh and is ordered to be ejected under sub-section 91), shall be punishable with imprisonment for a term which may extend to two years.

7A. Cognizance of offence- Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (No. 2 of 1974), no court other than that of the Judicial Magistrate of the first class shall take cognizance of, or try, any offence punishable under this Act.

7B. Procedure for prosecution-No court shall take cognizance of any offence under this Act except on the complaint of, or upon information received by the Block Development and Panchayat Officer or District Development and Panchayat Officer or any other officer authorised by the State Government on its behalf. Such proceedings shall be initiated only after the ejectment order against such a person has become final under section 7."

4. Section 13A of the principal Act shall be omitted.

5. In section 13B of the principal Act-

- (1) for sub-section (1), the following sub-section shall substituted namely-

"(1) Any person aggrieved by an order of the Assistant Collector of the first grade may, within a period of thirty days from the date of order passed under sub-section (1) or sub-section (2) of Section 7 prefer an appeal to the Collector in such form and manner, as may be prescribed, and the Collector may after hearing the appeal, confirm, vary or reverse the order as he deems fit.

Provided that no such appeal shall lie unless the amount of penalty, if any, imposed under sub-section (2) of Section 7, is deposited with the Collector."

- (2) in sub-section (2), for the words "at any time" the words, brackets, sign and figure "or on an application made to him by any person aggrieved by an order passed under the proviso to sub-section (1) of section 7 at any time" shall be substituted.

Section of section 13-B Punjab Act of 1961.-

6. After section 130D of the principal Act, the following section shall be inserted, namely-
- "13-E Public Servant-Every officer or employee acting under the provisions of this Act of the rules made thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code."

KUNDAN LAL,
Deputy Secretary to Government,
Haryana, Legislative Department

APPENDIX - 4

THE PUNJAB VILLAGE COMMON LANDS (Regulation) Rules, 1964

1. *Short title*- These rules may be called the Punjab Village Common Lands (Regulation) Rules, 1964.

3. The manner in which and the purposes for shamilat deh may be used (Section 5 and 15 (2) (a) of the Act).

(1) The Panchayat shall prepare a land utilization plan of the land in shamilat deh vested in it under the Act. (It shall be the duty of the Block Development and Panchayat Office to assist the Gram Panchayat concerned in the preparation of the said plan).

(2) The Panchayat may make use of the land in shamilat deh vested in it under the Act, either itself or through another, for any one or more of the following purposes-

(vii) Tree plantation or any other purpose related to forestry;

(xxv) Leasing out for cultivation;

7. Lease of lands in Shamilat deh to Collective Farming Co-operative Societies. (Section 5 and 15 (2) (g) of the Act).

(1) Subject to the provisions of Section 5 of the Act where in a village, cultivable area in shamilat deh is 200 acres or more, such land may be leased out without auction to the Collective Farming Co-operative Society if any, constituted in the village under the Punjab Co-operative Societies Act, 1961, on such terms and conditions as may be agreed to by the panchayat with the approval of the (Panchayat Samiti). Where, there are more than one Collective Farming Co-operative Societies in a village the land in shamilat deh may be leased out to them in proportion to the strength of their members. The Co-operative Collective Farming Society shall execute a lease deed in favour of the Panchayat. The total period of the lease shall not exceed 5 years.

14. Utilization of the income from the shamilat deh - (Sections 9 and 15 (2) (f) of the Act.)

The income derived by a panchayat from the use and occupation of land in shamilat deh vested in it shall be utilized for the benefit of the inhabitants of the village, as laid down in the Punjab Gram Panchayat Act, 1952 and for the improvement, maintenance and management of the shamilat deh.

APPENDIX - 5

THE INDIAN FOREST (HARYANA SECOND
AMENDMENT) ACT, 1973

AN

ACT

to amend the Indian Forest Act, 1927 in its application to
the State of Haryana.

CHAPTER - III
Of Village Forest

Formation of village forests-

28. (1) The (State Government) may assign to any village community the rights of government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forest so assigned shall be called village forests.

(2) The (State Government) may make rules for regulating the management of village forests, prescribing the conditions under which the community in which any such assignment is made may be provided with timber or other forest produce or pasture, and their duties for the protection and improvement of such forests.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village forest.

CHAPTER - IV
Of Protected Forests

Protected forests

29. (1) The (State Government) may, by notification in the (official Gazette) declare the provisions of this Chapter applicable to any forest-land or wasteland which is not

included in a reserved forest, but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled.

(2) The forest-land waste-land comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest-land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the (State Government) thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved.

Provided that if, in the case of any forest land or waste-land, the (State Government) thinks that such enquiry and record are necessary but that they will occupy such length of time as in the meantime to endanger the rights of Government, the (State Government) may, pending such inquiry and record, declare such land to be a protected forest, but so as not to bridge or affect rights of individuals or communities.

CHAPTER - V

Of the Control over Forests and Lands not being the property of Government

"35A. The State Government may, by rules made under section 76, regulate the preservation and disposal of trees, standing on lands belonging to or in the occupation of private persons, in respect of which permission to remove is required under the record of rights prepared under any law relating to land revenue."

37. (1) In any case under this Chapter in which the (State Government) considers that, in lieu of placing the forests or land under the control of a Forest Officer the same should be acquired for public purposes, the (State Government) may

proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (I of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the (State Government) shall acquire such forest or land accordingly.

Protection of forests at the requests of owners-

38.(1) The owner of any land or, if there be more than one owner, thereof, the owners of majority of shares therein (Punjab Act 13 of 1962) may, with a view to the formation or conservation of forests thereon, represent in writing to the Collection their desire-

- (a) that such land be managed on their behalf by the Forest Officer as a reserved or protected forest on such terms as may mutually agreed upon or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the (State Government) may, by notification in the (official Gazette), apply to such land and such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

APPENDIX - 6

iii) Agreement for Raising Plantation on Lands

This indenture made this _____ day of _____ 19 (One thousand nine hundred and _____) between the Governor of Haryana (hereinafter called the "Governor") on the one part and _____ Panchayat of _____ (hereinafter called the "Beneficiary") on the other part witnesseth as follows

1. That the beneficiary is authorised to execute this indenture on behalf of the Panchayat _____ and execute any works under this indenture to be done by the Panchayat.
2. That the Beneficiary agrees to hand over land in the annexed schedule to the Divisional Forest Officer, _____ (hereinafter referred to as the Forest Officer for raising plantations of suitable species, after concurrence of the concerned Block Development and Panchayat Officer).
3. The Beneficiary affirms that the Panchayat has the absolute right and title to the land described in the appended schedule.
4. That the Forest Officer will determine the species in consultation with the Beneficiary and raise the plantations at his own cost.
5. That the Forest Officer will be responsible for establishment and maintenance of the plantations for three years including the year of formation and will intimate the Beneficiary that his responsibilities as laid down in clause 6 of this indenture shall commence.
6. That the beneficiary shall -
 - a) Protect the plantations.
 - b) Maintain and manage the plantations after 3 years.
 - d) Refrain from using the land under plantation for any other purpose unless permitted by the Forest Officer.
 - e) Accept and implement all directions of the Forest Officer regarding protection, maintenance, management and harvesting of plantations.
7. That the Forest Officer or his Assistant or any person duly authorised by the Forest Officer in this respect, shall be entitled to enter upon the said land for purposes of raising, maintaining, managing and inspection of plantations and for any other purpose considered relevant to these plantations by the Forest Officer.
8. The Forest Officer will provide training to the villagers to be nominated by the Panchayat in the techniques of raising and maintaining nurseries and plantations.

9. The villagers will be permitted-

- a) To remove fruit, flowers, collect dead wood, fodder leaf and cut and carry grass free of charge. Provided, the Forest Officer may, at his discretion and after discussion with the Panchayat, prohibit some or all these privileges for the establishment and improvement of the plantations.
- b) To collect, at each thinning, and final fellings at such rate and such price as may be determined by the Panchayat, fuelwood, poles and small timber subject to availability.

Provided, the privileges mentioned under sub-clause a & b shall be exercised in accordance with a scheme for distribution and/or sale of the forest produce, arrived at by the Panchayat with the assistance of the Forest Officer.

10. That subject to any directions issued by the Forest Officer for management of plantations, the Beneficiary will be entitled to harvest the tree crop at the rotation age, provided the permission of the Forest Officer has been obtained in writing. The Beneficiary shall be entitled to sell such produce preferably for bonafide, local and domestic consumption as the Forest Officer may decide.

11. That the Forest Officer shall continue to issue directions and render technical advice and assistance to the beneficiary regarding maintenance, management and protection of plantation throughout the rotation and such directions shall be binding on the Beneficiary.

12. That if the Beneficiary fails to carry out any of the directions issued by the Forest Officer under this indenture or any of its obligation which the Beneficiary is bound to discharge, the Forest Officer shall carry out at his discretion any or all the works regarding protection, maintenance and management of plantations at the cost of the Beneficiary provided a notice of 15 days is issued to the beneficiary to that effect. This cost will form a part of direct plantation expenditure for the purposes of recovery.

13. That all tools, plants, stores, machinery and materials used on creation, maintenance, protection and management of plantations shall be property of the Govt.

14. That the concerned Block Development & Panchayat Officer under the directions of the Forest Officer will recover, within one month after the plantation is harvested and produce disposed off, the entire direct expenditure incurred by him for creation and maintenance of the plantations for the first 3 years from the Beneficiary provided-

- a) No interest will be charged.
- b) Expenditure on cost of seedlings, establishment, supervision, machinery, equipment, buildings and administration will not be recovered.
- c) The amount of recovery, as determined by the Forest Officer shall be binding.
- d) The recovery shall not exceed 50% of the gross revenue in one rotation and the balance will be recovered in the subsequent rotations.
- e) If there is no revenue from the sale of tree crop, no recovery shall be made provided such loss is caused by natural calamities like drought, fire, floods, frost and disease and the Beneficiary has intimated the Forest Officer in writing and the Forest Officer is satisfied.
- f) The state Govt. may, however, exempt the Panchayat fully or partly from paying the recovery or defer it to any other date or order the recovery through instalments.

15. That the Governor does not hold himself responsible for the success of plantations nor for any monetary return from the said plantations and will not be liable to any damage or loss occurring to the beneficiary as a result of creation of plantations on the said land or on account of any action of the Forest Officer.

16. All disputes and differences arising out of or in any way touching or concerning this indenture whatsoever shall be referred to the sole arbitration of Conservator of Forests, Social

Forestry circle for decision. The award of such Arbitrator shall be final and binding on the parties to this indenture. The beneficiary will have no objection to such appointment.

17. That it is agreed that the stamp fee, if any, on this indenture, shall be borne by the Governor.

18. In witness whereof, the parties to this agreement have here upto set and subscribed their hand seal on the dates hereinafter mentioned respectively.

Signed, sealed and delivered by the said _____

_____ day of _____ 19
(One thousand nine hundred and _____)

witness 1. _____
2. _____

Signed, sealed and delivered by the _____

On this _____ day of _____ 19
(One thousand nine hundred and _____)
on behalf of the Governor of Haryana and acting under his authority.

Schedule of land

Name of the Panchayat	Mauza	Tehsil	Distt.	Khasra Nos.	Area
1	2	3	4	5	6

Chapter Eleven

ECO-DEVELOPMENT IN KORAPUT, ORISSA AN OVERVIEW

Introduction

The Soil and Land Use Survey Division of the Directorate of Soil Conservation, Government of Orissa, proposes to undertake large scale soil conservation measures in three sub-divisions of Koraput district. It has proposed this undertaking as a project, for which it has sought financial aid from DANIDA.

A preliminary study of the project proposal showed that although the project was well conceived in technical terms, a great deal more thinking and planning was required to make it socially, legally and administratively feasible. Unless a project is sound in these three respects too, its execution not only becomes problematic but is also unable to benefit the people for whom it is intended. The proposal, as it stands, does not seem to be very satisfactory in these respects.

The present study was therefore, undertaken to find out and recommend the best socio-legal and administrative arrangements through which the objectives of the project can be achieved. It must be pointed out, at the outset, that since this project intends to benefit a section of the people who are among the poorest and most under-privileged, its implementation is highly desirable. The present study, hence, does not go into the merits of the project, but looks only at the modalities of execution, which, if implemented, would assure the attainment of the objectives.

Scope of Study

The project proposes to carry out soil conservation measures in Makangiri, Nawarangpur and Jeypore sub-divisions of Koraput. The observational field work for this study was limited to the Jeypore sub-division of Koraput. Extensive discussions were carried out with government officials, judicial offices, NGO's, the local people and other

researchers in the field. The study included a preview of all relevant research documents and papers pertaining to the project area, specially those done by ORG, NISWAS and ICSSR. A detailed study was also made of all the laws, rules and orders which apply to the area, and of problems in their implementation. Other existing projects and schemes which are already operative or planned, by the State and Central Government, were also surveyed.

A bibliography of the background material surveyed and studied, is attached separately herewith.

Brief Outline of the Existing Project Proposal

1. The project aims at improving the ecological condition in three sub-divisions of Koraput district, inhabited mainly by tribals. The main purpose behind this undertaking are : to increase agricultural productivity, provide fuel and fodder to the tribals, generate employment opportunities, prevent siltation and improve the catchment area in Indravati river.

The proposal is area oriented and not target group oriented. The beneficiaries, therefore, are not specified but it is presumed that they will be the tribals.

2. In terms of area the project intends to improve 3 sub-catchments, 37 watersheds, 143 sub-watersheds, 720 mini watersheds and 1480 micro watersheds.
3. The status of the land on which the soil conservation measures are to be carried out, according to the proposal, are as follows : (in hectares)

Medium Land	Low Land	Forest Land	Waste Land	Pasture Land	Other Land
1,92,726	64242	4,28,250	1,42,760	71,380	1,42,760

It must be noted that although this land data has been taken from the Land Survey record it does not give the exact legal classification, and hence the administrative jurisdiction, over these lands.

The legal-administrative classification of the lands is as follows :

The medium and low lands are revenue and private lands. The Forest land includes reserve and protected forests under the Forest Departments jurisdiction.

The pasture lands are owned by the Revenue Department. 'Others' include public department lands, institutional land and revenue land.

4. The administration of the project is to be looked after by the Agriculture and Cooperation Department, and the execution by the Directorate of Soil Conservation, Government of Orissa.

Major Issues for Consideration

1. Project Area

The major project area for the proposed work is forest department land. This accounts for 4,28,250 hectares out of the total of 10,42,148 hectares, that is about 41 per cent. It is, first of all, necessary to determine whether the Forest Department will make this extent of land available to the Directorate of Soil Conservation for executing the project.

The officials at Cuttack, who originally conceived the project, confirmed that the Forest Department had not been consulted in drawing up the scheme, that this could be done at a later stage. They, however, pointed out that there are a number of schemes in which the Soil Conservation Division and the Forest Department had worked together, such as the River Valley Catchment Programme, which is subsidised by the Ministry of Irrigation and funded by both the Soil Conservation Division and the Forest Department. Such joint programmes have been carried out in the Hirakud, Manchkund and Ringali projects.

This project proposal can be executed in a similar joint way, in the view of these officials.

However, the Forest Department officials, both in Bhubaneswar and Koraput, felt that any joint programme of

this nature, under this project, would not be possible; nor is the Forest Department likely to give its land to the Soil Conservation Division for working on it alone. The River Valley projects, they pointed out, were conceived and started in the fifties and the sixties when afforestation was not a major issue and the government policies were different. The Forest Conservation Act, 1930, and specially after its amendment in 1986, creates a whole range of new issues concerning the use of forest lands.

It should be noted, nonetheless, that a joint programme of afforestation has been undertaken in Orissa, under the National Rural Employment Programme. 70 per cent of the work in this case is undertaken by the Social Forestry wing of the Forest Department and 30 per cent is divided between the Soil Conservation and Horticulture Departments.

The officials of the Directorate of Soil Conservation at Bhubaneswar and Koraput, interestingly, asserted that the project work should be done only on revenue and private lands and that the forest department's land should not be included. They were willing to restructure the proposal and were open to suggestions about alternative models of execution, which were discussed with them at length.

Officials of the Forest Department (FD) suggested that the project could be divided into two parts. The FD could work on its own land under the same proposal; the funds for the purpose could be channelised separately to the FD by the government for its part of work. A separate Afforestation Division can be created under the project, for this purpose, as is the case in the SIDA project. Alternatively, the work could be entrusted to the Orissa Plantation Development Corporation, which is already undertaking such work.

It would be evident that the project proposal, would be legally and administratively problematic, in terms of determination of the project area. What we have, in the final analysis, are three models before us: the first one in which the project is narrowed down to exclude the forest lands; the second in which the FD works in collaboration with the Soil

Conservation Division; and the third one in which the two departments work separately on the same project. The Directorate of Soil Conservation itself now opts for the first model (modified in ways which will be mentioned subsequently). The third model is legally and administratively viable but due to the Forest Conservation Act, the FD cannot on its own enter into any negotiations with the beneficiaries. The Centre's permission will be required.

2. Shifting Cultivation

A very important problem in the project area is that of Podu or shifting cultivation. The tribals cultivate their community land as well as revenue land on a rotational basis. The possession and use of land for shifting cultivation is governed by customary rules, which within the tribal community has the force of law. On the basis of such customary rules lands are mortgaged, gifted and even sold within the community. (For details see: ORG Report on Shifting Cultivation, 1986)

Any afforestation programme, therefore, has to, first of all, tackle the problem of shifting cultivation. Any plot of land that is taken up for long term afforestation or soil conservation scheme gets in the way of the shifting cultivation practice. Plots of land on which such schemes are undertaken are 'blocked' from the tribals' perspective.

If soil conservation or afforestation has, nonetheless, to be done, 'blocking' the land in such a way that it remains or becomes productive for the immediate use of the tribals, amounts to rehabilitating them on that land, in a permanent way, and thus overcoming the problem of shifting cultivation. Any soil conservation or afforestation programme has, therefore, to be simultaneously a tribal rehabilitation programme. This is inevitable in this area.

Both the Orissa Government and the Central Government are well aware of this relationship between soil conservation or afforestation and tribal rehabilitation. They have learnt this from the success or failure of past programmes to control

shifting cultivation and stop land degradation. The Central Government set up a special Task Force on Shifting Cultivation which gave its report in 1983. This was duly endorsed in the meeting of Board on Shifting Cultivation and Committee of Ministers for Economic Development of North-East States. In the light of the recommendations of this Task Force a Special Central Assistance has been accepted, as proposed by the Planning Commission, vide letter no. 6/1/86-FR dated 5/2/87 from Secretary Planning Commission to Secretary Agriculture and Cooperation. Two major programmes have been set up as a consequence of this; the Prime Minister's shifting cultivation programmes & the Prime Minister's Massive Programme.

The Prime Minister's Massive Programme, which is supported by International Fund for Agricultural Development (IFAD), is meant to provide assistance to small and marginal farmers for soil conservation, land development and minor agricultural aids. A successful scheme under this Programme can be observed at Dongaria, undertaken by Dongaria Kondh Development Agency, Chhatikona (P.O.) near Vishankhota Railway Station.

It must be noted that two different strategies are being tried out under the two Prime Minister's Programmes. Whereas the Shifting Cultivation Programme is attempting to rehabilitate the tribals by making certain portions of land productive for them in ways that it starts yielding immediate benefits; under the Massive Programme they are simply being given Rs.30,000/- per family, as a compensatory grant over a period of time, so that they stay put and cultivate the same piece of land, while the FD and other departments improve other lands.

When soil conservation or afforestation programmes are carried out in Koraput district they will have to address themselves to and tackle these issues of shifting cultivation and tribal rehabilitation, such as the Soil and Land Use Survey Sub-Division has done in the 'The Project Report for Scheme for Control of Shifting Cultivation' for Kanjipani Sub-Watershed, Keonjhan district, in August 1987. (The Report was prepared under the Prime Minister's Shifting Cultivation Programme,

and is available with the Directorate of Soil Conservation). It must be noted that although SIDA is to execute its programmes in Koraput, in its Phase-II, these major issues of tribal rehabilitation and shifting Cultivation have not been tackled therein as yet.

It is not as if the Directorate of Soil Conservation is totally unaware of the problems of tribal rehabilitation and shifting cultivation in Koraput. Although the Prime Minister's Programmes are not as yet operative in the area, there is a separate Programme, implemented for over three years now, called the 'Economic Rehabilitation of Rural Poor Programme' (ERRP). Under this programme the Soil Conservation Division carries out soil conservation and afforestation on 2 acre plots, (70 trees per acre); and when the plots are developed it hands it over to the tribal family. The families are pre-selected, in accordance with their vicinity, need and prior use of land. The programme has been carried out all over Koraput and so far 24,000 acres have been handed over, according to the data furnished by the officials at Koraput. All such lands are revenue lands. The handing over is done in accordance with the government circular. This circular, however, applies only to the ERRP programme. In the course of this study some areas under ERRP, which are being developed, or which have been handed over, were personally visited and observed.

The point of mentioning the ERRP is this that it presents one model in which the problem of securing beneficiary rights is resolved. We shall presently review the issues of rights in detail. The point of Shifting Cultivation and rehabilitation over here, however, is different; it is just this that the project proposal under consideration, seems to be oblivious to these crucial issues. When the attention of the officials at Bhubaneswar and Cuttack was made to bear upon this they agreed that the proposal had not considered the issues of tribal rehabilitation, shifting cultivation and rights. They also agreed that with appropriate modifications the subsequent project reports, which will be based on the proposal, can take care of the relevant issues. It is necessary that these issues be taken care of if the projects are to be legally and socially viable.

3. Rights of the Beneficiaries

The tribals of the Koraput region are Scheduled Tribes under the Constitution (Scheduled Tribes) Order, 1950. The area in which they live is defined as 'Scheduled Area' under the Scheduled Area (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977. This means that no outsider can buy any land in these areas, nor can the tribals sell their land to any non-resident tribal. The alienation of tribal lands is also protected by numerous other laws and rules, such as Orissa Communal, Forest and Private Lands (Prohibition of Alienation) Act, 1948; Orissa Scheduled Areas Transfer of Immovable Property (By Scheduled Tribes) Regulations, 1956, 1959; the Orissa Land Reforms Act, 1960, Rules 1965. The trees on tribal lands are prohibited from being sold to an outside contractor by the Orissa Protection of Scheduled Castes and Scheduled Tribes (Interest of Trees) Act, 1981.

The effect of all these laws and rules is that no outsider can benefit from tribal lands, but they do not stop the government itself from benefitting from such lands. The government has, over the colonial period, and in the post Independence period, declared most of these lands to be its own property, most of it under the Forest Departments Jurisdiction and the rest under the Revenue Department's jurisdiction. Even the pasture land (gochar) in this area does not belong to the community; it belongs to the Revenue Department. There are recorded rights for grazing on such lands. This is controlled by the Orissa Forest (grazing of cattle) Rules, 1980. The forest lands come under the purview of the Orissa Forest Act, 1972. There is no record of any patta being given to any tribal on forest lands in this area. This fact was ascertained both at Bhubaneswar and Koraput. Under the SIDA afforestation scheme, there are provisions to give tree pattas, but no rules or order have so far been framed for this purpose. Discussions at Bhubaneswar with the FD, Land Consolidation Commissioner and others made it evident that although a draft has been proposed the government is in no hurry to pass such rules.

In regard to land alienation it should be noted that although the laws protect such alienation by outsiders, they do not do so with reference to insiders. There are numerous **Bengali and Tibetan refugees** who have been settled in the area by the government. Many of these inhabitants and refugees have become larger land owners over the years. (For details see : NISWAS Report on 'Scheduled Areas', 1986 - ICSSR sponsored, unpublished). (The ORG Reports also bring this out). Despite the laws against non-alienation of tribal lands, alienation is indeed a major problem. This is partly because of the loopholes in the laws, but mainly due to the continued impoverishment of the tribals.

The issues concerning tribal land alienation were discussed in detail with the local NGO, Nyaya Sahayak Samiti. It reported that there are innumerable cases of land alienation, and that it had taken many of these cases to court. The non-alienation laws have not been successful.

The project proposal under consideration does not go into these issues, nor does it address the question how the benefits to the tribals can be legally secured under the existing conditions.

Unless the Orissa Forest Act is changed and the government makes a radical shift in its forest and land use policy, there is little likelihood that legally secured direct benefits accrue to the tribals. The project as it stands, is legally not viable, if its main aim is to benefit the tribals. It is of course legally feasible if the aim is merely to improve the catchment area of Indravati river on government lands. It must be remembered that just on the other side of Bastar area the World Bank is funding three large and seven small dams on the Indravati river. The major benefit from these hydro-electric projects is to go directly to the industrial and urban sector, as per the decision of the Madhya Pradesh government. Improving the catchment area for Indravati river, through DANIDA funds, would then mean directly increasing the benefits for those getting power from the Bodhghat, Bhopalpattanam and Inchinapalli dams. The Kolba river in

Koraput district has also been dammed. The major beneficiary from this is NEICO. NEICO is also going in for captive generation of power by building small dams on Kolba. (For details on problems concerning dams on Indravati river see : Chhatrapati Singh : "Dams and the Law", with special reference to the Bodhghat Project. An Indian Law Institute Report, 1987).

Here there is a major policy decision - whether DANIDA wishes to improve the watershed and catchment area of Indravati and Kolba so as to benefit the national economy (of the industrial and urban rich class), or directly benefit the underprivileged and impoverished tribals. If it is the latter then the strategy has to be different.

It is important to note that even if the policy decision is to benefit the hydro-electric projects (and hence the national economy), any soil conservation and afforestation measure in Koraput cannot be taken without the help of the local tribal people. The Forest and Soil Conservation Departments do not have enough manpower or facilities to maintain, protect and look after the plantations over a long period. The local people's involvement is inevitable. The question then becomes, to what level is this involvement possible? Within the project proposal it is one of employment. The wages for such employment are governed by the Minimum Wages Act, in which the actual wage given is really the minimum. According to lawyers and activists in Koraput, even this minimum wage is often not fully received. Employment on the projects in this manner, however, means actually buying off the labour cheaply so as to benefit the outsiders through greater generation of hydro-electric power and timber. The tribals receive the minimum benefit which is the operational cost to benefit the industries and the urban rich.

As mentioned, if the tribals have to receive the maximum benefit through such projects, the strategy will have to be different. They will have to be rehabilitated on their land and assets created on it. A possible model through which this can be achieved is described in the recommendations.

VI. Recommendations

1. Project Area

The Forest Conservation Act prohibits giving pattas to tribals on forest lands, without the Centre's permission. There is no record of such patta sanctions after the Act has come into force. Therefore, it is unlikely that assets can be created for the tribals on the forest lands. It is hence recommended that the project should limit itself to revenue lands in Koraput district. This is also necessary from the administration's point of view. Besides the territorial and jurisdictional problems between departments there are also issues of accountability and responsibilities. Usually this is much better when they are specifically located and not spread out thinly among many departments.

Amongst the revenue land the pasture land should either be avoided, or else included only for purposes of fodder production. The wastelands are all revenue land, but amongst the medium, low and uplands it will have to be estimated how much is revenue land and how much privately owned. Soil conservation measures can also be carried out on private lands if the owners accept it. But *prima facie* this cannot be included in the project proposal. Besides, there are the Prime Minister's programmes for marginal and small farmers. The Orissa Government should be persuaded to operationalize these in the Koraput district.

2. Tribal Rehabilitation

Like the Prime Minister's Programmes, this project should be turned into a tribal rehabilitation programme. Soil conservation and afforestation should be done in such a way that they generate immediate benefits to the tribals. Some of the norms of the Prime Minister's Programmes can be adopted for this project; such as selection of families, number of families per hectare, expenditure of Rs.30,000/- per family, etc. Instead of determining the project areas purely on land area basis the parameters should include the number of families that need to be rehabilitated in each project area.

3. Species Selection

A soil conservation and afforestation programme which aims at rehabilitation of tribals should keep the forest rules pertaining to trees in mind while selecting the species. There are some laws such as the Orissa Forest Produce (Control of Trade) Rules, 1983, Orissa Kandu Leaves (Control of Trade) Rules, 1962, Orissa Excise (Mahua Flowers) Rules, 1976, Orissa Forest Produce (Control of Trade) Act, 1987. The Orissa Forest Act, 1972, etc. which prohibit or control transit marketing and harvesting of timber and forest produce. The species should be selected in such a manner that the tribals are not encumbered by such rules. This is important keeping in mind the fact that under ERRP and other schemes, such as Kasipur Plantation Programme, remunerative trees and plants (Eg: coffee and cashew) are planted on lands which have been allotted to the tribals. Under the social forestry programmes sponsored through NGOs by the National Wasteland Development Board, Banana and Papaya are also being planted together with the forest species. The Nyaya Shayak Samiti and the Bana Bharti, amongst other NGOs in the area are undertaking such plantation schemes with the NWDB funds. Even in the ERRP schemes executed by the Soil Conservation Department, which were observed in the field work in the course of this study, it was seen that extensive coffee plantation was done, along with jack-fruit and guava trees, although the ERRP circular provides for only cashew plantations. Such innovations are welcome when it is done thoughtfully, keeping in mind the short term and long term benefits of the recipients. The soil conservation measures that need to be undertaken under this proposal should make a judicious selection of plants and trees so that there are short term and long term benefits, and should not rely on forest species only.

4. Beneficiary Rights

The advantage of selecting only revenue wastelands as project areas is that there already exists a practice of giving usufruct rights on revenue lands in Orissa. The Soil

Conservation Department, which has made this proposal, is familiar with this practice, under its coffee and cashew plantation schemes in FRRP programmes. The practice of giving and or tree pattas on forest lands can be pursued. These issues will arise for the FD under the SIDA schemes. In the meantime the existing practices and rules with which the Soil Conservation Department is already acquainted needs to be fully exploited to achieve the ends of this proposal.

The Government of Orissa's notification (No. : 17293-VIISC (M) 43/81-AC_ of 30th April, 1981, issued by the Agriculture and Cooperation Department, is a case in point. Under this notification usufruct rights on 24,000 acres of revenue lands have been given in Koraput district alone. (A copy of this notification is attached as an Appendix to this study).

(It must be noted that the term 'patta' is foreign to Orissa, it has come in recently through literature circulated within the State from the Centre, the popular legal term for patta, in Orissa, is dafayati rights, it means usufruct rights.)

The mentioned notification gives only dafayati rights and not land rights, and it applies only to the ERRP scheme. Consequently there are two alternative strategies which emerge from this: either the DANIDA funded projects be included in or made colateral with the ERRP programme, so that the same notification applies to them, or a similar parallel order be passed by the Secretary, Agriculture and Cooperation Department, Government of Orissa to operationalize the DANIDA funded projects. Under the law the Secretary has the authority and the power to do this.

The issues concerning dafayati rights under the DANIDA projects were discussed at length with the Tehsildar at Koraput. He affirmed that there would be no problem at all in executing the programme in this way and in giving dafayati rights on revenue wastelands, once the decision had been made at the State capital level.

The procedure for giving dafayati rights would be as follows : the BDO will have to select the beneficiaries, the Soil Conservation Departments will have to requisition with the

Tehsildar the allotment of trees and plants to the beneficiaries, (on the prescribed forms), the Tehsildar will have to ascertain the entitlements of the beneficiaries and any rights of others, after which he will issue a notification. On the issuance of such notifications the beneficiaries are supposed to come and claim their bona-fide deed papers. This is the usual practice followed under the ERRP programme.

It was pointed out that although the Tehsildars issue the notifications and the beneficiaries, *de facto*, begin to claim their rights and use the produce, they do not usually come forward to claim their entitlement papers. This is because under the revenue taxation laws, which still apply in the area, there is a revenue tax of Rs.11/- per tree, annually. Where there are at least 70 trees per acre, under the ERRP programme, the total tax amounts to a great deal for the tribals. The Revenue Department takes a lenient view of the matter with reference to the tribals and does not usually collect the tax. But the existence of such a wealth tax rule is clearly counter-productive from the point of view of soil conservation, social forestry or tribal rehabilitation. It will be important to persuade the state government to repeal this rule, or at least exempt such poverty alleviation and social forestry programmes from such rules. The DANIDA funded projects should specify these exemptions at the proposal level itself.

This project proposal will require involvement of 7 Tehsildars in the sub-divisions of Nawarangpura, Malkangiri and Jeypore. All the villages listed in the project proposal fall within these seven Tehsils. The Tehsil headquarters for these seven areas are in : Nawarangpura, Debugaon, Unerkote, Malkangiri, Jeypore, Kotapad, and Bareguwa.

It must be noted, in conclusion, that a plan in which the tribals are made the immediate beneficiaries, does not go against the interest of national economy, nor does it go against the general objective of the proposal to improve the catchment areas for Indravati river. The difference is that in such a plan the tribals benefit equitably in the development projects. The general improvement of the large area of wastelands under the

projects will evidently improve the ecological conditions for watershed management, but in the meantime, such a plan will also improve the economic conditions of the tribals.

It is recommended that these suggestions be taken into account while finalising the proposal for soil conservation measures in Koraput district.

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Chapter Twelve

LEGAL ASPECTS OF FORESTRY IN MAHARASTRA*

Industrial Policy and Commercial Forestry

We need to consider the industrial policy only in relation to the use of forest resources, that is, only that industrial sector which is forest based. In specific, if we look at the laws concerning industries, in Maharashtra the following issues are relevant :

The following types of incentives are given to various industries who use forest based resources [listed under the first schedule of the Industries (Regulation and Development) Act, 1951] and to other Boards and Agencies, in accordance with the Government of Maharashtra, September, 30, 1999 Scheme :

- a) Exemptions in sales tax liabilities (under the Central Sales Tax Act, 1956);
- b) Exemptions in purchase tax (under the Bombay Sales Tax Act, 1959);
- c) Special capital incentives (loans and grants) for new units in backward areas (i.e. which are mostly forest areas or close to forests with good tree coverages);
- d) Octroi incentives (new or expanding units entitled to refund of octroi tax paid to local authorities);
- e) Exemption from electricity duty and power supplied at subsidised rates (refund of money spent on electricity in terms of grants, for upto 7 years);
- f) Contribution towards feasibility studies for implementing forest resources based projects upto 25 per cent of the cost.

It is to be noted that these incentives are also available to small scale industries, cooperatives, handicraft boards and to

* With Reference to the National Tropical Forestry Plan

non-government organizations. However, the conditions required to avail of these incentives are such that it is only the larger industries, or capitalists, who can make use of them (conditions such as having a certain amount of basic capital, having industrial licenses, certificates and clearances from the government, being in business for a certain number of years, etc.)

It is evident that through these laws and rules the government's forest resource use policy is to make such resources available at very low costs to the industries and that it is more eager to promote forest based industries than conservation of the resources as desired by the National Forest Policy. This is also borne out by the fact that the government has made legal contracts with about 13 industries to supply them raw materials from natural forests at subsidised prices. Many of these contracts are upto 1999 and some upto 2013. Evidently, no conservation plans can be enforced in these natural forests so long as the contracts remain. Even if there is regeneration or afforestation, these industries will have the prior legal claim over the resources unless the central or the state government repeals the contracts through a legislation.

As per the information supplied by the Maharashtra Forest Department, the following contracts with the industries are currently legally valid:

Industry	Contract Period	Quantity
M/s Ballarpur Inds. Ltd.	i) 1947 to 30/6/91	22860 MT
	ii) 1968 to 30/6/91	1,39,000 MT (of Bamboo)
M/s Ballarpur Inds. Ltd.	28/11/1974 to 1991	1,08,000 M3 ((hardwood)
M/s Vindya Paper Mills, Ltd.	i) 1/12/84 to 30/6/2004	15,000 MT (of Bamboo)
	ii) 5/10/79 to open	30,000 M3 (hardwood)
M/s Central Pulp Mills Ltd.	1964 to 15/4/2000	15,000 MT (of Bamboo)

Indian Plywood Mfg. Co. Ltd.	i) Open	2750 M3 (Teak)
	ii) 15/11/1998 to 30/9/1999	5300 M3 (other) 50,000 M3 (teak)
Vidarbha Veneer Inds. Ltd.	9/8/73 to 1993	1500 M3 (teak)
		4500 M3 (other)
Art Plywood Inds. Ltd.	18/9/1981 to	2150 M3 (teak)
	30/9/2001	
Process Timber Prod. Ltd.	15/11/78 to	10,000 M3
	30/9/1993	(teak)
M/s Wood-N-Wood	11/9/1980 to	12,000 M3
	30/9/1999	(teak)
Vardhman Plyboard Industries.	16/4/1984 to	2,10,000 M3
	16/4/2004	(hardwood)
Western India Match Co. Ltd.	21/1/1971 to	1000 M3
	21/1/1991	(semal)
Friends Match Inds. Ltd.	27/1/1983 to	750 M3
	27/1/2003	(semal)
Maharashtra Kath & Allied Inds. Ltd.	19/8/1983 to	800 M3
	19/8/2013	(Khair)
P.M.P. Kath & Chemical Inds. Ltd.	25/11/1982 to	750 M3 (khair)
	30/9/1999	700 M3 (timber)

The federal Forest Conservation Act, 1990, prohibits use of forest lands for non-forestry purposes without the permission of the central government, but it does not require that the state governments take permission for contracting out or leasing out the forest resources to industries.

The industrial policy and the laws need to be obviously reconsidered in light of the National Forest Policy. The province and nature of the Forest Conservation Act also needs to be seriously reconsidered.

A major amendment in the Forest Conservation Act is recommended so that the law regulates the use of resources too and not merely the land. Otherwise, the aims of the National Forest Policy cannot be achieved (coverage of 1/3 land area by forest).

If industrial growth is to be self supporting and sustained, it is necessary to abolish all subsidies and incentives. Getting raw material at lower rates from natural forests is a major loss to the overall national economy, although it may benefit the industry for a short while (till the natural resources last, which is estimated to be about 20 years at the most). From the long term economic perspective it will be better if the wastelands are commercially developed to provide a perpetual resource base for the industries. These wastelands are not likely to be developed either by the forest department (or corporation) or the industries as long as the natural forest resources can be inexpensively provided by the standing forests. As discussed earlier, the complete work plan methodology for forestry needs to be changed if a sustained resource base for the industries is to be available. Compensatory afforestation needs to be available. Compensatory afforestation needs to be made compulsory and the cost of regeneration needs to be included in the work plans for harvesting. This can be achieved by amending the Indian Forest Act, 1927 (as adopted by Maharashtra). Keeping in mind that the National Forest Policy also demands 1/3 of the land area of the state to be forested, compensatory afforestation becomes all the more necessary.

Evidently, commercial forestry need not be limited to forest areas alone. It can also be supported by private forestry, which can be carried out not only by farmers but also by groups, such as societies, cooperatives and village panchayats. However, the possibility of successful private forestry depends a great deal on the general land use policy of the state and the legal framework that governs such private lands and the resources grown on them. Private forestry for industrial or other purposes will, therefore, require a consideration of land use policy and the legal framework for private lands in general. It is to these considerations that we must turn now. It must be

kept in mind that even the working of Forest Corporations is closely tied up with the availability of resources from private sources.

3. Land Use Policy and Wasteland Development

There are a number of laws which directly or indirectly determine the land use practice in Maharashtra. The land use policy (the one in actual practice) is, therefore, the one that these laws prescribe and not what any other official land use policy may say, including the National Forest Policy (or government notifications which say that cooperatives, non-government organisations and other private agencies must be involved in the afforestation and use of land). Some of the important laws which determine land use and what sort of individual or organization can actually use it are : The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961; The Maharashtra Private Forests (Acquisition) Act, 1975; and the Maharashtra Felling of Trees (Regulation) Act, 1964. The land use policy and practice must be analysed within the context of these laws, since at the ground level they determine the type of forestry that is possible outside the forest lands and consequently the use of such lands.

a) The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

The Act limits private ownership to about 12 acres of agricultural land for a family. There are relaxations for farmers cooperatives and joint farmers groups, but these are for agricultural purposes only. Richer landlords and industrial companies carry on forestry work on fertile agricultural land through the various loopholes in the law. An economically viable forestry work evidently requires much larger pieces of consolidated land than are available under the ceiling laws.

Since forest land is controlled by the forest department, and since the department, in any case, is willing to supply the resources from such lands, the industry's direct interest is in exploiting the fertile agricultural lands for generation of raw material, and not wastelands. Economic costs and productivity

clearly make it more practicable for the industries to go in for the fertile agricultural land than wastelands, so long as this is possible under the laws (through the loopholes). Given this market and legal logic, the natural consequence will be that over the years the area of wastelands (denuded forest lands) will progressively increase and more and more of the fertile agricultural kind will be used for forestry purposes. This is already being seen in many states, such as Haryana and Gujarat. Also, for absent landlords, plantation of trees becomes a method of protecting their land from encroachment and agricultural laws (such as the rights of the tiller if he tills it for more than a certain number of years). Such landlords are not really interested in good quality productive commercial forestry, even a minimum return will do, as long as their land remains protected. A great number of "farm forests" in Maharashtra (also in Haryana, Gujarat, U.P., and other states) seem to be of this type, which is all right from the point of view of the landlords but not good from the point of view of national economic productivity.

Now a clear headed thinking and understanding of land use is required here as to how much of the fertile (irrigated) land does a state want to reserve for agricultural purposes and how much can it put in for forestry. This evidently depends upon the state's food and agricultural policy besides the forest policy. There is no point in having land ceiling on agricultural land without viewing the question in this context.

The basic question is : has the state used more of the productive (irrigated) land for food production than is required in its food policy? If that is so, the state must determine the extent to which land is required for agricultural purposes, and remove the ceiling on the rest of the agricultural land, making it possible for the industries, cooperatives and non-government agencies to commercially exploit such lands for forestry purposes. This is not to suggest any resurrection of landlordism (zamindari), the ceiling law should make it clear that it will not apply only in cases of group ownership, such as of companies, cooperatives, NGOs and panchayats, and that too only for the purposes of forestry. In some states, such as

Gujarat, the government has already exempted cooperatives from the province of ceiling laws.

If, on the contrary, it is perceived that the fertile agricultural land is barely sufficient for food production for the state, it is necessary to find legal means to eliminate forestry on agricultural lands. In such a situation it is not only necessary to enforce the existing ceiling law more stringently, but also necessary to pass another law totally banning forestry on agricultural land. Such a step is urgently required even for the development of wastelands (denuded revenue or forest lands), for, as noted, as long as it is more profitable to do forestry on agricultural land no industry will turn to the wastelands; and also as long as the forest department is allowed to give the resources from the natural forests to the industries, it will not bother about the development of wastelands. If the state perceives that the protection of both the natural forests and agricultural land is of paramount importance, and that the wasteland need to be developed, then this two pronged legal strategy is the only way out, namely, ban the supply of raw materials from natural forests and ban forestry work on agricultural land. This will force the development of wastelands, which would evidently be less profitable immediately, but more profitable and sustainable in the long run for industrial development. After taking these two steps, the wastelands (revenue and forest lands) can be allotted to the industries, cooperatives, panchayats, NGOs and other agencies, with strict provisions that the land can be used for forestry purposes only.

The Forest Corporations have not been successful due to continued supply of raw material from the natural forest resources and the industry's attempts to get the remaining resources from private lands. There is very little economic or legal necessity for the Corporations to develop the wastelands for commercial purposes which is the essential task given to them. Legally, the Corporations are competent to enter into joint financial ventures with the industries on a joint management and joint capital investment basis). But in the present conditions, it makes little economic sense for the

industries to enter into such joint ventures with the Corporations. The formation of the Corporations is in itself not a wrong or bad legal strategy. It is a method of retaining the ownership and control over forest lands as public (government) lands, and at the same time allowing the industries an access to such lands. But the economic viability of such a strategy depends on the corresponding availability of the resources from forest and private lands, that is, on the demand and supply situation. So long as the demands continue to be met from these other sources, the role of the Corporations will continue to be marginal.

Which of the above two legal strategies is more appropriate for the state? Banning forestry on agricultural land or liberalizing forestry on such lands? This decision can be taken only through mutual discussions between the Ministry of Forests, the Ministry of Agriculture and the Revenue Department, depending upon the amount of land required for food production etc. Agricultural land, being a state subject, can be handled by the Department of Revenue and Department of Agriculture alone, whereas for forest lands both the state Ministry of Forest and the central Ministry of Environment are competent to take the decisions.

b) The Maharashtra Private Forests (Acquisition) Act, 1975

Through this Act all private forests were acquired by the government (Forest Department) post 1975. The Act also makes all forests grown on private lands ipso facto the property of the state. The reason for the enactment of this law at that time was the observation that the landlords did not really care about the forests and that the lands were getting progressively denuded. But in the present context, evidently, such a law is contrary to the possible success of any private forestry, even if the ceiling law is changed. To get around this law, farmers have been planting trees (but not officially) calling their plantations 'forests'. In fact, even the Social Forestry Wing of the Forest Department in Maharashtra is unwilling to call the plantations it has done on revenue and private lands (under the social forestry programme) 'forests' because these will then attract

the provisions of this Act as well as the Forest Conservation Act. The panchayats and NGOs are also similarly reluctant to classify their work officially as forests. There seems to be an ubiquitous apprehension (and a genuine one) among private land owners that land planted with trees is liable to go out of their possession and control. There is also a similar apprehension at the official level that revenue and private lands planted with trees will be regulated by the centre and go out of the control of the state level officials, due to the Forest Conservation Act. Both these apprehensions prevent the growth of private forestry, whether by individuals or by groups.

The provisions of the Private Forests (Acquisition) Act obviously need to be rationalized if private farm forestry is to be encouraged. Now that it has served its purpose of acquiring denuded and surplus ceiling lands, it should not be made to apply to all new private forestry ventures.

The scope of the Forest Conservation Act also needs to be similarly made explicit so that it does not include village forests (panchayat forests), private forests, and forestry by NGOs and cooperatives, even on forest lands or revenue lands allotted by the government. Such forests need to be regulated by other state made laws, such as within the panchayat acts, cooperatives acts, Societies Act and the Companies Act.

According to the National Forest Policy the rural areas are to be made self-sufficient in their resource requirements, specially fuel and fodder needs. As such, a general thrust of the forestry plan should be to re-create as many village forests as possible which will be maintained on a sustained yield basis. Where villages do not have land for such forests, revenue or forest lands need to be allotted for this purpose. This has been partly the thrust of the social forestry programmes. The spirit of the Private Forests (Acquisition) Act and the Forest Conservation Act, however, seem to be oblivious to this demand of the National Policy.

- c) The Maharashtra Felling of Trees (Regulation) Act, 1964.

This act, through its schedule, restricts the kind of trees that can be felled on private lands. These restrictions become disincentives for private enterprises, and indirectly determine the species that are planted on private lands (that is species which fall outside the schedule, such as eucalyptus, acacia and poplar, and for which official permissions will not be required). This law, therefore, although unintentionally decides land use for forestry in a major way, in so far as private and revenue or panchayat lands are concerned. There is a need to rationalise the law, by making it apply only in areas where natural forests exist and their protection is required. In all other areas the people must be free to select the species (and determine land use) according to their needs.

It is only after the amendment of these land and resource laws that people can freely and effectively participate in forestry work. It is a well recognised fact now that the Forest Department alone cannot provide for all the growing fuel, fodder and timber needs of the people. The manpower required to generate the resources for providing such basic needs would be on the same scale as that of agriculture, and such manpower is just not available with the Forest Department. The involvement of other agencies, such as private farmers, non-government organisations, cooperatives and statutory bodies like the panchayats and municipal corporations, is inevitable. Let us turn to note the other legal factors, besides the land laws, that need to be taken into account for successfully involving people in forestry.

4. Joint Management and Social Forestry

The major agencies, besides the Forest Department, which can engage themselves in forestry work are : NGOs, cooperatives, panchayats, municipalities, satisfied groups (such as village development committees, Mahila mandals, Yuvak Mandals etc.), and educational and religious institutions. The institutions, evidently, can be only marginally involved since their main tasks are of a different nature.

The June 1990 Notification of the Central Ministry of Environment has directed all state Forest Departments to work on lands which are by and large, allotted to panchayats,

municipalities and other statutory bodies. Although the panchayat can pass a resolution to allow such ad hoc committees to work on its land, the final power to use the resources or define the rules of benefit sharing remain with the panchayat. There is a great likelihood of conflict between such agencies and the panchayats, as has been noticed in other states.

In the final analysis then, it is only the elected, statutory and constitutionally warranted bodies, namely the panchayats and municipalities, which are the legally viable agencies available for forestry work. As long as these democratically elected bodies continue to exist, they will continue to make demands both on land and its resources. Therefore it will be wiser for the Forest Department to work with these agencies and strengthen them, rather than set up new agencies who have no statutory standing. In terms of numbers too, the panchayats and municipalities are ubiquitous. There is no question of the non-availability of such agencies. Once the agency with which the Forest Department has to work for the purposes of social forestry has been settled, there are a number of other minor issues that need to be attended to for ensuring success.

First, the schedule of trees under the Tree Act or the Indian Forest Act needs to be rationalised so that people have greater freedom in selection of species. The rules need to be enforced only in the vicinity of genuine reserved or protected forests and not on all private lands.

Second, the transit of timber rules, under the Indian Forest Act, needs to be similarly rationalised. Again, they need to apply only in areas where there is a genuine possibility of theft of government timber, that is, close to government forest areas. The rule need not apply in all places.

Third, the state government must ensure that for forestry work, the people get at least wages in accordance with the Minimum Wages Act. The work under this Act can be classified as industrial labour so that people are attracted to undertake forestry labour.

It has been argued that the best legal strategy will be to empower and engage the panchayats in all rural areas to carry out forestry work so that the villages become self sustaining.

THE INDIAN FOREST ACT, 1927

(Act No. 16 of 1927)

[21st September, 1927]

An Act to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce

Whereas, it is expedient to consolidate the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce; it is hereby enacted as follows :—

CHAPTER I PRELIMINARY

1. Short title and extent.—(1) This act may be called the Indian Forest Act, 1927.

(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies to the territories which, immediately before the 1st November, 1956, were comprised in the States of Bihar, Bombay, Coorg, Delhi, Madhya Pradesh, Orissa, Punjab, Uttar Pradesh and West Bengal; but the Government of any State may by notification in the Official Gazette bring this Act into force in the whole or any specified part of that State to which this Act extends and where it is not in force.

2. Interpretation Clause.— In this Act, unless there is anything repugnant in the subject or context, —

(1) "cattle" includes elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats and kids;

(2) "Forest-officer" means any person whom ***the State Government or any officer empowered by ***the State Government in this behalf, may appoint to carry out all or any of the purposes of this Act or to do anything required by this Act or any rule made thereunder to be done by a Forest-officer;

(3) "forest-office" means an offence punishable under this Act or under any rule made thereunder;

(4) "forest-produce" include—

(a) the following whether found in or brought from, a forest or not, that is to say :—

timber, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark lac, mahua flowers, mahua seeds, kuth and myrabolams, and

(b) the following when found in, or brought from a forest, that is to say:—

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,

(iii) wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(iv) peat, surface soil, rock, and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries);

(4A) "owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court;

(5) "river" includes any stream, canal, creek or other channels, natural or artificial.

(6) "timber" includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not; and

(7) "tree" includes palms, bamboos, skumps, brush-wood and canes.

CHAPTER II OF RESERVED FORESTS

3. Power to reserve forests.— The State Government may constitute any forest-land or waste-land which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

4. Notification by States Government.— (1) Whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette—

- (a) declaring that it has been decided to constitute such land a reserved forest;
- (b) specifying, as nearly as possible, the situation and limits of such land; and
- (c) appointing an officer (hereinafter called "the Forest Settlement officer") to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits or in or over any forest-produce, and to deal with the same as provided in this Chapter.

Explanation— For the purpose of clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, ridges or other well known or readily intelligible boundaries.

(2) The officer appointed under clause (c) of sub-section (i) shall ordinarily be a person not holding any forest-office except that of Forest Settlement officer.

(3) Nothing in this section shall prevent the State Government from appointing any number of officers not exceeding three, not more than one of whom shall be a person holding any forest-office except as aforesaid, to perform the duties of a Forest Settlement-officer under this Act.

5. Bar of accrual of forest rights.— After the issue of a notification under section 4 no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for other purpose shall be made in such land except in accordance with such rules as may be made by the State Government in this behalf.

6. Proclamation by Forest Settlement officer.— When a notification has been issued under section 4, the Forest Settlement-officer shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation—

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided will ensure on the reservation of such forest; and
- (c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest

Settlement-officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof.

7. Inquiry by Forest Settlement officer.— The Forest Settlement-officer shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

Notes.— Where a notification under Section 4 declaring the land as reserved forest is issued and a claim under Section 6 is preferred then the Forest Settlement Officer is bound to enquire into all the claims and these claims cannot be rejected simply on the ground that the same were not stamped : In re U.P. Legal Aid and Advice Board, AIR 1991 All 281.

8. Powers of Forest Settlement officers.— For the purpose of such inquiry, the Forest Settlement officer may exercise the following powers, that is to say,

- (a) power to enter, by himself or any officer authorised by him for the purpose, upon any land, and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.— Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless before the notification under section 20 is published, the person claiming them satisfies the Forest-Settlement-officer that he had sufficient cause for not preferring such claim within the period fixed under section 6.

10. Treatment of claims relating to practice of shifting cultivation.— (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement-officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regulated, and submit the statement to the State Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the State Government may make an order permitting or prohibiting the practice wholly or in part.

(3) If such practice is permitted wholly or in part, the Forest Settlement-officer may arrange for its exercise—

- (a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants or
- (b) by causing certain portions of the land under settlement to be separately demarcated and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the State Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the State Government.

11. Power to acquire land over which right is claimed.— (1) In the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to

forest-produce or a watercourse, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement-officer shall either—

- (i) exclude such land from the limits of the proposed forest; or
- (ii) come to an agreement with the owner thereof for the surrender of his rights; or
- (iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(3) For the purpose of so acquiring such land—

- (a) the Forest Settlement officer shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (1 of 1894).
- (b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 9 of that Act;
- (c) the provisions of the preceding sections of that Act shall be deemed to have been complied with; and
- (d) the Collector, with the consent of the claimant, or the Court, with the consent of both parties, may award compensation in land, or partly in land and partly in money.

12. Order on claims to rights of pasture or to forest-produce.— In the case of a claim to rights of pasture or to forest-produce, the Forest Settlement-officer shall pass an order admitting or rejecting the same in whole or in part.

13. Record to be made by Forest Settlement-officer.— The Forest Settlement-officer, when passing any order under section 12, shall record, so far as may be practicable, —

- (a) the name, father's name, caste, residence and occupation of the person claiming the right; and
- (b) the designation, position and area of all fields or groups of fields (if any), and the designation and position of all buildings (if any) in respect of which the exercise of such rights is claimed.

14. Record where he admits claim.— If the Forest Settlement-officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is not admitted, specifying the number and description of the cattle which the claimant is from time to time entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. He shall also record whether the timber or other forest produce obtained by the exercise of the rights claimed may be sold or bartered.

15. Exercise of rights admitted.— (1) After making such record the Forest Settlement-officer shall, to the best of his ability, having the regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Forest Settlement-officer may—

- (a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest-produce (as the case may be) to the extent so admitted; or

- (b) so alter the limits of the proposed forest as to exclude forest-land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or
- (c) record an order, continuing to such claimants a right of pasture or to forest-produce, as the case may be, to the extent so admitted at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by the State Government.

16. *Commutation of rights.*— In case the Forest Settlement-officer finds it impossible having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted he shall, subject to such rules as the State Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as he thinks fit.

17. *Appeal from order passed under section 11, section 12, section 15 or section 16.*— Any person who has made a claim under this Act, or any Forest-officer or other person generally or specially empowered by the State Government in this behalf, may, within three months from the date of the order passed on such claim by the Forest Settlement-officer under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of rank not lower than that of a Collector, as the State Government may, by notification in the Official Gazette, appoint to hear appeals from such order:

Provided that the State Government may establish a Court (hereinafter called the Forest Court) composed of three persons to be appointed by the State Government, and when the Forest Court has been so established, all such appeals shall be presented to it.

18. *Appeal under section 17.*— (1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Forest Settlement-officer, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal be to an officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land-revenue.

(3) If the appeal be to the Forest Court the Court shall fix a day and a convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such officer or Court or by the majority of the members of such Court as the case may be, shall, subject only to revision by the State Government, be final.

19. *Pleadings.*— The State Government, or any person who has made a claim under this Act may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement-officer, or the appellate officer or Court, in the course of any inquiry or appeal under this Act.

20. *Notification declaring forest reserved.*— When the following events have occurred, namely:—

- (a) the period fixed under section 6 for preferring claims has elapsed and all claims if any made under that section or section 9 have been disposed of by the Forest Settlement-officer;
- (b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) passed on such claims has elapsed, and all appeals (if any)

presented within such period have been disposed of by the appellate officer or Court; and

- (c) all lands (if any) to be included in the proposed forest, which the Forest Settlement-officer has, under section 11, elected to acquire under the Land Acquisition Act, 1894 (1 of 1894), have become vested in the Government under section 16 of that Act,

the State Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary-marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by, the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

21. Publication of translation of such notification in neighbourhood of forest.— The Forest-officer shall, before the date fixed by such notification, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangement made under section 15 or section 18.— The State Government may, within five years from the publication of any notification under section 20, revise any arrangement made under section 15 or section 18, and may for this purpose rescind or modify any order made under section 15 or section 18, and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

23. No right acquired over reserved forest, except as here provided.— No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the Government or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction.— (1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease mortgage or otherwise, without the sanction of the State Government :

Provided that when any such right is appendant to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest-produce obtained in exercise of any such right shall be sold or bartered except to such extent as may have been admitted in the order recorded under section 14.

25. Power to stop ways and water courses in reserved forests.— The Forest officer may, with the previous sanction of the State Government or of any officer duly authorised by it in this behalf, stop any public or private way or water course in a reserved forest, provided that a substitute for the way or water-course so stopped, which the State Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest-officer in lieu thereof.

26. Acts prohibited in such forests.— (1) Any person who—

- (a) makes any fresh clearing prohibited by section 5, or
 - (b) sets fire to a reserved forest, or in contravention, of any rules made by the State Government in this behalf, kindles any fire, or leave any fire burning, in such manner as to endanger such a forest:
- or who, in a reserved forest—

- (c) kindles, keeps or carries any fire except at such seasons as the Forest-officer may notify in this behalf :
- (d) trespasses or pastures cattle, or permits cattle to trespass ;
- (e) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (f) fells, girdles, lops, or burns any tree or strips off the bark or leaves from, or otherwise damages, the same :
- (g) quarries stone, burns lime or charcoal, or collects, subjects to any manufacturing process, or removes, any forest-produce;
- (h) clears or breaks up any land for cultivation or any other purpose;
- (i) in contravention of any rules made in this behalf by the State Government hunts, shoots fishes, poisons water or sets traps or snares; or
- (j) in any area in which the Elephants' Preservation Act, 1879, (6 of 1879) is not in force, kills or catches elephants in contravention of any rules so made

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damage done to the forest as the convicting Court may direct to be paid.

(2) Nothing in this section shall be deemed to prohibit—

- (a) any act done by permission in writing of the Forest-officer, or under any rule made by the State Government; or
- (b) the exercise of any right continued under clause (c) of sub-section (2) of section 15, or created by grant or contract in writing made by or on behalf of the Government, and

(3) Whenever fire is caused wilfully or by gross negligence in reserved forest, the State Government may (notwithstanding that any penalty has been inflicted under this section) direct that in such forest or any portion thereof the exercise of all rights of pasture or to forest-produce shall be suspended for such period as it thinks fit.

27. Power to declare forest no longer reserved.— (1) The State Government may ***by notification in the official Gazette, direct that, from a date fixed by such notification, any forest or any portion thereof reserved under the Act shall cease to be a reserved forest.

(2) From the date so fixed such forest or portion shall cease to be reserved; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III Of Village Forests

28. Formation of village-forests.— (1) The State Government may assign to any village-community the rights of Government to or over any land which has been constituted a reserved forest, and may cancel such assignment. All forests so assigned shall be called village-forests.

(2) The State Government may make rules for regulating the management of village forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest-produce or pasture, and their duties for the protection and improvement of such forest.

(3) All the provisions of this Act relating to reserved forests shall (so far as they are not inconsistent with the rules so made) apply to village-forests.

CHAPTER IV Of Protected Forests

29. Protected forests.— (1) The State Government may, by notification in the Official Gazette, declare the provisions of this Chapter applicable to any forest land or waste-land or waste-land which is not included in a reserved forest but which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest-produce of which the Government is entitled.

(2) The forest-land and waste-lands comprised in any such notification shall be called a "protected forest".

(3) No such notification shall be made unless the nature and extent of the rights of Government and of private persons in or over the forest land or waste-land comprised therein have been inquired into and recorded at a survey or settlement, or in such other manner as the State Government thinks sufficient. Every such record shall be presumed to be correct until the contrary is proved;

Provided that, if, in the case of any forest-land or waste-land, the State Government thinks that such inquiry and record are necessary, but that they will occupy such length of time as in the meantime to endanger the rights of Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

30. Power to issue notification reserving trees, etc.— The State Government may, by notification in the Official Gazette—

- (a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;
- (b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion, shall be suspended during such terms, provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the right suspended in the portion so closed; or
- (c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

31. Publication of translation of such notification in neighbourhood.— The Collector shall cause a translation into the local vernacular of every notification issued under section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

32. Power to make rules for protected forests.— The State Government may make rules to regulate the following matters, namely:—

- (a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacture and removal of forest-produce, from protected forests;
- (b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for

their own use, and the production and return of such licences by such persons;

- (c) the granting of licences to persons felling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons;
- (d) the payments, if any, to be made by the persons mentioned in clauses (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any, to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved under section 30;
- (i) the cutting of grass and pasturing of cattle in such forests;
- (j) hunting, shooting, fishing, poisoning water and setting traps or snares in such forests and the killing or catching of elephants in such forests in areas in which the Elephants' Preservation Act, 1879 (6 of 1879), is not in force;
- (k) the protection and management of any portion of a forest closed under section 30; and
- (l) the exercise of rights referred to in section 29.

33. Penalties for acts in contravention of notification under section 30 or of rules under section 32.— (1) Any person who commits any of the following offences, namely:—

- (a) fells, girdles, lops, taps or burns any tree reserved under section 30, or strips off the bark or leaves from or otherwise damages, any such tree;
- (b) contrary to any prohibition under section 30, quarries any stone, or burns any lime or charcoal or collects, subjects to any manufacturing process, or removes any forest-produce;
- (c) contrary to any prohibition under section 30, breaks up or clears for cultivation or any other purpose any land in any protected forest;
- (d) sets fire to such forest, or kindles a fire without taking all reasonable precautions to prevent its spreading to any tree reserved under section 30, whether standing, fallen or felled, or to say closed portion of such forest;
- (e) leaves burning any fire kindled by him to the vicinity of any such tree or closed portion;
- (f) fells any tree or drags any timber so as to damage any tree reserved as aforesaid;
- (g) permits cattle to damage any such tree;
- (h) intringes any rule made under section 32.

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whenever fire is caused wilfully or by gross negligence in a protected forest, the State Government may, notwithstanding that any penalty has been inflicted under

this section, direct that in such forest or any portion thereof the exercise of any right of pasture or to forest-produce shall be suspended for such period as it thinks fit.

34. Nothing in this Chapter to prohibit acts done in certain cases.— Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest-officer, or in accordance with rules made under section 32, or, except as regards any portion of a forest closed under section 33, in the exercise of any right recorded under section 29.

CHAPTER V

Of the Control over Forests and Lands and being the Property of Government

35. Protection of forests for special purposes.— (1) The State Government may, by notification in the Official Gazette, regulate or prohibit in any forest or waste land—

- (a) the breaking up or clearing of land for cultivation;
- (b) the pasturing of cattle; or
- (c) the firing or clearing of the vegetation,

when such regulation or prohibition appears necessary for any of the following purposes:—

- (i) for protection against storms, winds, rolling stones, floods and avalanches;
- (ii) for the preservation of the solid one the ridges and slopes and in the valleys of hilly tracts, the prevention of landslips or of the formation of ravines and torrents or the protection of land against erosion, or the deposit thereon of sand, stones or gravel;
- (iii) for the maintenance of a water-supply in springs, rivers and tanks;
- (iv) for the protection of roads, bridges, railways and other lines of communication;
- (v) for the preservation of the public health.

(2) The State Government may, for any such purpose, construct at its own expense, in or upon any forest or waste-land, such work as it thinks fit.

(3) No notification shall be made under sub-section (1) nor shall any work be begun under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be made or work constructed as the case may be, and until his objections, if any, and any evidence he may produce in support of the same, have been heard by an officer duly appointed in that behalf and have been considered by the State Government.

36. Power to assume management of forests.— (1) In case of neglect of, or willful disobedience to any regulation or prohibition under section 35, or if the purposes of any work to be constructed under that section so require, the State Government may, after notice in writing to the owner of such forest or land and after considering his objections, if any, place the same under the control of a Forest-officer, and may declare that all or any of the provisions of this Act relating to reserved forests shall apply to such forest or land.

(2) The net profits, if any, arising from the management of such forest or land shall be paid to the said owner.

37. Expropriation of forests in certain cases.— (1) In any case under this Chapter in which the State Government considers that, in lieu of placing the forest or land under the control of a Forest Officer, the same should be acquired for public purposes, the

State Government may proceed to acquire it in the manner provided by the Land Acquisition Act, 1894 (1 of 1894).

(2) The owner of any forest or land comprised in any notification under section 35 may, at any time not less than three or more than twelve years from the date thereof, require that such forest or land shall be acquired for public purposes, and the State Government shall acquire such forest or land accordingly.

38. Protection of forests at request of owners.— (1) The owner of any land or, if there be more than one owner thereof, the owners of shares therein amounting in the aggregate to at least two-thirds thereof may, with a view to the formation or conservation of forests thereon, represent in writing to the Collector their desire—

- (a) that such land be managed on their behalf by the Forest-officer as a reserved or a protected forest on such terms as may be mutually agreed upon; or
- (b) that all or any of the provisions of this Act be applied to such land.

(2) In either case, the State Government may, by notification in the Official Gazette, apply to such land such provisions of this Act as it thinks suitable to the circumstances thereof and as may be desired by the applicants.

CHAPTER VI

Of the duty on timber and other forest-produce

39. Power to impose duty on timber and other forest produce.— (1) The Central Government may levy a duty in such manner, at such places and at such rates as it may declare by notification in the Official Gazette on all timber or other forest produce—

- (a) which is produced in the territories to which this Act extends and in respect of which the Government has any right;
- (b) which is brought from any place outside the territories to which this Act extends.

(2) In every case in which such duty is directed to be levied *ad valorem* the Central Government may fix by like notification the value on which such duty shall be assessed.

(3) All duties on timber or other forest produce which, at the time when this Act comes into force in any territory, are levied therein under the authority of the State Government, shall be deemed to be and to have been duly levied under the provisions of this Act.

(4) Notwithstanding anything in this section, the State Government may, until provision to the contrary is made by Parliament continue to levy any duty which it was lawfully levying before the commencement of the Constitution; under this section as then in force;

Provided that nothing in this sub-section authorises the levy of any duty which as between timber or other forest-produce of the State and similar produce of the locality outside the State, discriminates in favour of the former, or which, in the case of timber or other forest-produce of one locality and similar timber or other forest produce of another locality.

40. Limit not to apply to purchase-money or royalty.— Nothing in this Chapter shall be deemed to limit the amount, if any, chargeable as purchase-money or royalty on any timber or other forest-produce, although the same is levied on such timber or produce while in transit, in the same manner as duty is levied.

CHAPTER VII

Of the control of timber and other forest-produce in transit

41. Power to make rules to regulate transit of forest produce.— (1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, as vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

(2) In particular and without prejudice to the generality of the foregoing power such rules may—

- (a) prescribe the routes by which alone timber or other forest-produce may be imported, exported or moved into, from or within the State;
- (b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;
- (c) provide for the issue, production and return of such passes and for the payment of fees therefor;
- (d) provide for the stoppage, reporting, examination and marking of timber or other forest-produce in transit, in respect of which there is reason to believe that any money is payable to the Government on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or, to which it is desirable for the purposes of this Act to affix a mark;
- (e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in, order that such marks may be affixed to it, and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;
- (f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest-produce, and the throwing of grass brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- (g) provide for the prevention or removal of any obstruction of the channel or banks of any such river, of timber or other forest-produce, and the throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- (h) prohibit absolutely or subject to conditions, within specified local limits, the establishment of sawpits, the converting, cutting, burning, concealing or making of timber the altering or effacing of any marks on the same, or the possession or carrying of marking hammers or other implements used for marking timber;
- (i) regulate the use of property marks for timber, and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

(3) The State Government may direct that any rule made under this section shall not apply to any specified class of timber or other forest-produce or to any specified local area.

41A. Powers of Central Government as to movements of timber across customs frontiers.— Notwithstanding anything in section 41, the Central Government may make rules to prescribe the route by which alone timber or other forest-produce may be

imported, exported or moved into or from the territories to which this Act extends across any customs frontier as defined by the Central Government, and any rules made under section 41 shall have effect subject to the rules made under this section.

42. Penalty for breach of rules made under section 41.— (1) The State Government may by such rules prescribe as penalties for the contravention thereof imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

(2) Such rules may provide that penalties which are double of those mentioned in sub-section (1) may be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence.

43. Government and Forest-officers not liable for damage to forest-produce at depot.— The government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest-produce while at a depot established under a rule made under section 41, or while detained elsewhere, for the purposes of this Act; and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

44. All persons bound to aid in case of accidents at depot.— In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest-officer or Police-officer demanding his aid in averting such danger or securing such property from damage or loss.

CHAPTER VIII

Of the Collection of Drift and Stranded Timber

45. Certain kinds of timber to be deemed property of Government until title thereto proved, and may be collected accordingly.— (1) All timber found adrift, beached, stranded or sunk—

All wood or timber bearing marks which have not been registered in accordance with the rule made under section 41, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and

in such areas as the State Government directs, all unmarked wood and timber,

shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto, as provided in this Chapter.

(2) Such timber may be collected by any Forest-officer or other person entitled to collect the same by virtue of any rule made under section 51 and may be brought to any depot which the Forest-officer may notify as a depot for the reception of drift timber.

(3) The State Government may, by notification in the Official Gazette, exempt any class of timber from the provisions of this section.

46. Notice to claimants of drift timber.— Public notice shall from time to time be given by the Forest officer, of timber collected under section 45. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

47. Procedure on claim preferred to such timber.— (1) When any such statement is presented as aforesaid, the Forest-officer may, after making such inquiry as he thinks fit,

either reject the claim after according his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest-officer may either deliver the same to any of such persons who he deems entitled thereto, or may refer the claimants to the Civil Courts, and return the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him; but no person shall recover any compensation or costs against the Government, or against any Forest-officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

48. Disposal of unclaimed timber.— If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 46, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period fixed by section 47, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 47, in such other person free all encumbrances not created by him.

49. Government and its officers not liable for damage to such timber.— The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 45, and no Forest-officer shall be responsible for any such loss or damage, unless he causes such loss or damage negligently, maliciously or fraudulently.

50. Payments to be made by claimant before timber is delivered to him.— No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest-officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 51.

51. Power to make rules and prescribe penalties.— (1) The State Government may make rules to regulate the following matters, namely:—

- (a) the salving collection and disposal of all timber mentioned in section 45;
- (b) the use and registration of boats used in salving and collecting timber;
- (c) the amounts to be paid on salving, collecting, moving, storing or disposing of such timber; and
- (d) the use and registration of hammers and other instruments to be used for marking such timber.

(2) The State Government may prescribe, as penalties for contravention of any rules made under this section, imprisonment for a term which may extend to six months, or fine which may extend to five hundred rupees, or both.

CHAPTER IX

Penalties and Procedure

52. Seizure of property liable to confiscation.— (1) When there is reason to believe that a forest-offence has been committed in respect of any forest-produce, such produce, together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

Provided that, when the forest-produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

Notes.— When a forest offence has been committed and the Forest officer confiscates the property or directs criminal prosecution and proper guidelines have been given in exercising the discretion, then such discretion is not *ultra vires* Article 14 : *Sarat Kumar Mala v State of Orissa*, AIR 1992 Orissa 128.

53. Power to release property seized under section 52.— Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

54. Procedure thereupon.— Upon the receipt of any such report, the Magistrate shall, with all convenient, despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

55. Forest produce, tools, etc., when liable to confiscation.— (1) All timber or forest-produce which is not the property of Government and in respect of which a forest-offence has been committed, and all tools, boats, carts and cattle used in committing any forest-offence shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

56. Disposal on conclusion of trial for forest offence, of produce in respect of which it was committed.— When the trial of any forest-offence is concluded, any forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest-officer, and, in any other case, may be disposed of in such manner as the Court may direct.

57. Procedure when offender not known or cannot be found.— When the offender is not known or cannot be found the Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest-officer, or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

58. Procedure as to perishable property seized under section 52.— The Magistrate may, notwithstanding anything, hereinbefore contained, direct the sale of any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold.

59. Appeal from orders under section 55, section 56 or section 57.— The officer who made the seizure under section 52, or any of his official superiors, or any person claiming to be interested in the property so seized may, within one month from the date of any order passed under section 55, section 56, or section 57, appeal therefrom to the

Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final.

60. Property when to vest in Government.— When an order for the confiscation of any property has been passed under section 55 or section 57, as the case may be, and the period limited by section 59 for an appeal from such order has elapsed, and no such appeal has been preferred, or when, on such an appeal being preferred, the Appellate Court confirms such order in respect of the whole or a portion of such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

61. Saving of power to release property seized.— Nothing herein before contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized under section 52.

62. Punishment for wrongful seizure.— Any Forest-officer or Police-officer who vexatiously and unnecessarily seizes any property on pretence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees, or with both.

63. Penalty for counterfeiting or defacing marks on trees and timber and for altering boundary-marks.— Whoever, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Indian Penal Code—

- (a) knowingly counterfeits upon any timber or standing tree a mark used by Forest-officers to indicate that such timber or tree is the property of the Government or of some person, or that it may lawfully be cut or removed by some person; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest officer; or
- (c) alters, moves, destroys or defaces any boundary-mark of any forest or waste-land to which the provisions of this Act are applied.

shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

64. Power to arrest without warrant.— (1) Any Forest-officer or Police-officer may, without orders from a Magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest-offence punishable with imprisonment for one month or upwards.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Act as to release on bond, take or send the person arrested before the magistrate having jurisdiction in the case, or to the officer in charge of the nearest police station.

(3) Nothing in this section shall be deemed to authorise such arrest for any act which is an offence under Chapter IV unless such act has been prohibited under clause (c) of section 30.

65. Power to release on a bond a person arrested.— Any Forest-officer of a rank not inferior to that of a Ranger, who, or whose subordinate, has arrested any person under the provisions of section 64, may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

66. Power to prevent commission of offence.— Every Forest-officer and Police-officer shall prevent, and may interfere for the purpose of preventing, the commission of any forest-offence.

67. Power to try offences summarily.— The District Magistrate or any magistrate of the first class specially empowered in this behalf by the State Government may try summarily, under the Code of Criminal Procedure, 1898, any forest-offence punishable with imprisonment for a term not exceeding six months, or fine not exceeding five hundred rupees, or both.

68. Power to compound offence.— (1) The State Government may, by notification in the Official Gazette, empower a Forest officer—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest-offence, other than an offence specified in section 62 or section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and
- (b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A Forest-officer shall not be empowered under this section unless he is a Forest officer of a rank not inferior to that of a Ranger and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of fifty rupees.

69. Presumption that forest-produce belongs to Government.— When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved.

CHAPTER X

Cattle trespass

70. Cattle Trespass Act, 1871, to apply.— Cattle trespassing in a reserved forest or in any portion of a protected forest which has been lawfully closed to grazing shall be deemed to be cattle doing damages to a public plantation within the meaning of section 11 of the Cattle-trespass Act, 1871 (1 of 1871), and may be seized and impounded as such by any Forest officer or Police officer.

71. Power to alter fines fixed under that Act.— The State Government may, by notification in the Official Gazette, direct that, in lieu of the fines fixed under section 12 of the Cattle-trespass Act, 1871 (1 of 1871) there shall be levied for each head of cattle impounded under section 70 of this Act such fines as it thinks fit, but not exceeding the following, that is to say:—

For each elephant	ten rupees.
For each buffalo or camel	two rupees.
For each horse, mare gelding, pony, colt, filly, mule, bull, bullock, cow or heifer	one rupee.
For each calf, ass, pig, ram, ewe, sheep, lamb, goat or kid	eight annas.

CHAPTER XI

Of Forest-officers

72. State Government may invest Forest-officers with certain powers.— (1) The State Government may invest any Forest-officer with all or any of the following powers, that is to say:—

- (a) power to enter upon any land and to survey, demarcate and make a map of the same;
- (b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material object;
- (c) power to issue a search-warrant under the Code of Criminal Procedure, 1898 (5 of 1898); and
- (d) power to hold an inquiry into forest-offences, and, in the course of such inquiry, to receive and record evidence.

(2) Any evidence recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate, provided that it has been taken in the presence of the accused person.

73. Forest officers deemed public servants.— All Forest-officers shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

74. Ingenuity for acts done in good faith.— Not suit shall lie against any public servant for anything done by him to good faith under this Act.

75. Forest-officers not to trade.— Except with the permission in writing of the State Government, no Forest-officer shall, as principal or agent, trade in timber or other forest-produce, or be or become interested in any lease of any forest or in any contract for working any forest, whether in or outside the territories to which this Act extends.

CHAPTER XII Subsidiary Rules

76. Additional powers to make rules.— The State Government may make rules—

- (a) to prescribe and limit the powers and duties of any Forest-officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscation under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government, but grown on lands belonging to or in the occupation of private persons; and
- (d) generally, to carry out the provisions of this Act.

77. Penalties for breach of rules.— Any person contravening any rule under this Act, for the contravention of which no special penalty is provided, shall be punishable with imprisonment for a term which may extend to one month, or fine which may extend to five hundred rupees, or both.

78. Rules when to have force of law.— All rules made by the State Government under this Act shall be published in the Official Gazette, and shall thereupon, so far as they are consistent with this Act, have effect as if enacted therein.

CHAPTER XIII Miscellaneous

79. Persons bound to assist Forest-officers and Police-officers.— (1) Every person who exercises any right in a reserved or protected forest, or who is permitted to take any forest-produce from, or to cut and remove timber or to pasture cattle in, such forest, and every person who is employed by any such person in such forest, and every person in any village contiguous to such forest who is employed by the Government or who receives employments from the Government for services to be performed to the community, shall be bound to furnish without unnecessary delay to the nearest Forest-

officer or Police-officer any information he may possess respecting the commission of, or intention to commit, any forest-offence, and shall forthwith taken steps, whether so required by any Forest-officer or Police-officer or not,—

- (a) to extinguish any forest fire in such forest of which he has knowledge or information;
- (b) to prevent by any lawful means in his power any fire in the vicinity of such forest of which he has knowledge or information from spreading to such forest,

and shall assist any Forest-officer or Police-officer demanding his aid and

- (c) in preventing the commission in such forest of any forest-offence; and
- (d) when there is reason to believe that any such offence has been committed in such forest in discovering and arresting the offender.

(2) Any person who, being bound so to do, without lawful excuse (the burden of proving which shall lie upon such person) fails—

- (a) to furnish without unnecessary delay to the nearest Forest-officer or Police-officer any information required by sub-section (1);
- (b) to prevent, as required by sub-section (1), to extinguish any forest fire in a reserved or protected forest;
- (c) to prevent, as required by sub-section (1), any fire in the vicinity of such forest from spreading to such forest; or
- (d) to assist any Forest-officer or Police-officer demanding his aid in preventing the commission in such forest of any forest-offence, or, when there is reason to believe that such offence has been committed in such forest, in discovering and arresting the offender,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

80. Management of forests, the joint property of Government and other persons.—

(1) If the Government and any person be jointly interested in any forest or waste-land, or in the whole or any part of the produce thereof, the State Government may either—

- (a) undertake the management of such forest, waste-land or produce, accounting to such person for his interest in the same; or
- (b) issue such regulation for the management of the forest, waste-land or produce by the person so jointly interested as it deems necessary for the management thereof and the interests of all parties therein.

(2) When the State Government undertakes under clause (a) of sub-section (1) the management of any forest, waste-land or produce, it may, by notification in the Official Gazette, declare that any of the provisions contained in Chapters II and IV shall apply to such forest, waste-land or produce, and there upon such provisions shall apply accordingly.

81. Failure to perform service for which a share in produce of Government forest is enjoyed.— If any person be entitled to a share in the produce of any forest which is the property of Government or over which the Government has proprietary rights or to any part of the forest-produce of which the Government is entitled upon the condition of duly performing any service connected with such forest, such share shall be liable to confiscation in the event of the fact being established to the satisfaction of the State Government that such service is no longer so performed:

Provided that no such share be confiscated until the person entitled thereto, and the evidence, if any which he may produce in proof of the due performance of such service, have been heard by an officer duly appointed in that behalf by the State Government.

82. Recovery of money due to Government.— All money payable to the Government under this Act, or under any rule made under this Act, or on account of the price of any forest-produce, or of expenses incurred in the execution of this Act in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land-revenue.

Note.—Where forest produce has been sold but the contracted earnest money is not paid, the same can be recovered under the provisions of Section 82 and Section 83 of the Act : *Jogendra Lal Saha V. State of Bihar*, AIR 1991 SC 1148. Also see *State v. Thakuralal*, AIR 1991 MP 259.

83. Lien on forest produce for such money.— (1) When any such money is payable for or in respect of any forest-produce, the amount thereof shall be deemed to be a first charge on such produce, and such produce may be taken possession of by a Forest-officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest-officer may sell such produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, if not claimed within two months from the date of the sale by the person entitled thereto, shall be forfeited to Government.

84. Land required under this Act to be deemed to be needed for a public purpose under the Land Acquisition Act, 1894.— Whenever it appears to the State Government that any land is required for any of the purposes of this Act, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894 (1 of 1894).

85. Recovery of penalties due under bond.— When any person, in accordance with any provision of this Act, or in compliance with any rule made thereunder, binds himself by any bond or instrument to perform any duty or act or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of breach of the conditions thereof may, notwithstanding anything in section 74 of the Indian Contract Act, 1872 (9 of 1872) be recovered from him in case of such breach as if it were an arrear of land revenue.

¹[85A. Saving for rights of Central Government.— Nothing in this Act shall authorise a Government of any State to make any order or do anything in relation to any property not vested in that State or otherwise prejudice any rights of the Central Government or the Government of any other State without the consent of the Government concerned.]

86. [Repeals.] Rep. by Repealing and Amending Act, 1947 (2 of 1948), s. 2 and Sch.

THE SCHEDULE.—[*Enactments Repealed*] Rep. by s. 2 and Sch., *ibid*.

¹Subs. by the A.O. 1950, for the former S.85A which had been inserted by the A.O. 1937.

1. APPLICATION OF FOREST (CONSERVATION) ACT, 1980

1.1 Definition

- (i) The term "Forest land" mentioned in Section 2 of the Act refers to reserved forest, protected forest or any area recorded as forest in the government records. Lands which are notified under Section 4 of the Indian Forest Act would also come within the purview of the Act. (Supreme Court's Judgement in NTPC's case). All proposals for diversions of such areas to any non-forest purpose, even if the area is privately owned, would require the prior approval of the Central Government.
- (ii) The term "tree" for the purpose of this Act will have the same meaning as defined in Section 2 of the Indian Forest Act, 1927 or any other Forest Act which may be in force in the forest area under question.

1.2 Clarifications

- (i) The cases in which specific orders for dereservation or diversion of forest areas in connection with any project were issued by the State Government prior to 25.10.1980, need not be referred to the Central Government. However, in cases where only administrative approval for the project was issued without specific orders regarding dereservation and/or diversion of forest lands, a prior approval of the Central Government would be necessary.
- (ii) Harvesting of fodder, grasses, legumes etc., which grow naturally in forest areas, without removal of the tree growth, will not require prior approval of the Central Government. However, lease of such areas to any organisation or individual would necessarily require approval under the Act.

1.3 Investigation and Survey

- (i) Investigations and surveys carried out in connection with development projects such as transmission lines, hydro-electric projects, seismic surveys, exploration for oil drilling etc. will not attract the provisions of the Act as long as these surveys do not involve any clearing of forest or cutting of trees, and operations are restricted to clearing of bushes and lopping of tree branches for purpose of sighting.
- (ii) If, however, investigations and surveys involve clearing of forest area or felling of trees, prior permission of the Central Government is mandatory.
- (iii) Notwithstanding the above, survey, investigation and exploration shall not be carried out in wildlife sanctuaries, national parks and sample plots demarcated by the Forest Department without obtaining the prior approval of the Central Government, whether or not felling of trees is involved.
- (iv) The work of actual construction would however, fully attract the provisions of the Act and prior clearance of the Central Government must be obtained even if such work does not require felling of trees.
- (v) It is clarified that the permission to survey, exploration or prospection would not *ipso facto* imply any commitment on the part of the Central Government for diversion of forest land.

1.4 Explanation Regarding Non-Forest Purpose

- (i) Cultivation of tea, coffee, spices, rubber and palm is a non-forestry activity, attracting the provisions of the Act.
- (ii) Cultivation of fruit-bearing trees or oil-bearing plants or medicinal plants would also require prior approval of the Central Government except when:
 - (a) The species to be planted are indigenous to the area in question; and
 - (b) Such planting activity is part of an overall afforestation programme for the forest area in question.

1.5 Tusser Cultivation

- (i) Tusser cultivation in forest areas by the tribals as a means of their livelihood without undertaking monocultural Asan or Arjun plantations shall be treated as a forestry activity. Therefore, no prior approval of the Central Government under the Act is necessary.
- (ii) Tusser cultivation in forest areas for which specific plantation of Asan or Arjun trees are undertaken for providing host trees to the silk cocoons shall be treated as forestry activity not requiring prior approval of the Central Government provided such plantation activity does not involve any felling of existing trees; provided further that while undertaking such plantations, at least three species are planted, of which no single species shall cover more than 50% of the planted area.
- (iii) Plantation of mulberry for Silkworm rearing is a non-forestry activity, attracting the provisions of the Act.

1.6 Mining

- (i) Mining including underground mining is a non-forestry activity. Therefore, prior approval of the Central Government is essential before a mining lease is granted in respect of any forest area. The Act would apply not only to the surface area which is used in the mining but also to the entire underground mining area beneath the forest. A renewal of an existing mining lease in a forest area also requires the prior approval of the Central Government. Continuation or resumption of mining operation on the expiry of mining lease without prior approval would amount to contravention of the Act:
- (ii) The advice of the Ministry of Law, Government of India in regard to the Supreme court Order in Civil Appeal No. 2349 of 1984 dated 7.5.1985 is at Annexure-III.
- (iii) Boulders, bajri, stone, etc., in the riverbeds located within forest areas would constitute a part of the forest land and their removal would require prior approval of the Central Government.

1.7 Clarification on Sub-clause 2 (iii) of the Act

- (i) The Sub-clause shall not be attracted when any forest land or any portion thereof is assigned to any authority, corporation, agency or any other organisation wholly owned, managed or controlled by the concerned State/Union Territory Government and/or the Central Government. Such Government owned, managed or controlled authority/corporation/agency, which has been assigned such forest land, shall not reassign it or any part thereof to any other organisation or individual.
- (ii) Any scheme or project which involves assignment of any forest land by way of lease or similar arrangement, for any purpose whatsoever, including afforestation, to any private person or to any authority/agency/organisation not wholly owned, managed or controlled by the Government (such as private or joint sector ventures) shall attract the provisions of this sub-clause.

1.8 Clarification on Sub-clause 2(iv) of the Act

- (i) Sub-clause 2 (iv) of the Act prohibits clearing of naturally grown trees in forest land for the purpose of using it for reforestation. The provisions of this sub-clause will be attracted if the forest area in question bears naturally grown trees and are required to be clear-felled, irrespective of their size, for harvesting existing crop and/or raising plantation through artificial regeneration techniques, which may include coppicing, pollarding or any other mode of vegetative propagation.
- (ii) All proposals involving clearing of naturally grown trees in any forest area, including for the purpose of reforestation, shall be sent by the concerned State/UT Government in the form of Management Plans/Working Plans to

the Regional Chief Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.

- (iii) All proposals in respect of sanction of Working Plans/Management Plans shall be finally disposed of by the Regional Office, under Section 2 of the Act. While examining the proposal, the Regional Office would ensure that the final decision is in conformity with the National Forest Policy, Working Plan guidelines and other relevant rules and guidelines issued by the Central Government from time to time. The Regional Office will however, invariably seek prior clearance of the Ministry whenever the proposal involves clear-felling of forest area having density above 0.4 irrespective of the area involved. Also prior clearance would be required when the proposal is for clear felling of an area of size more than 20 ha. in the plains and 10 ha. in the hilly region, irrespective of density.

1.9 Clarification on Section 3 B of the Act

- (i) Each case of the violation of the Act shall be reported by the concerned State/Union Territory Government to the Central Government.
- (ii) The report of violation shall be described in a self-contained note and supported by requisite documents, including particularly the names and designations of the officials/persons who are *prima facie* responsible for the contravention of the Act.
- (iii) In case it is not possible to fix the responsibility for commission/ omission of any action leading to the violation of the Act, a full explanation with relevant supporting documents shall be appended to the report.
- (iv) Any person and/or authority nominated by the Central Government may be required to discharge any of the duties, including prosecution under the Act in any Court as may be deemed appropriate for this purpose. In such an eventuality, the Government of the concerned State/Union Territory shall make available all such records or documents as may be called upon by the investigation officer.

1.10 Diversion of Forest Land for Regularisation of Enroachments

Detailed guidelines issued in this regard vide this Ministry's No. 13. 1/90 - F.P. (1) dated 18.9.90 shall be strictly followed. These are included in Annexure IV.

2. Submission of Proposals

2.1 General

- (i) Rule 4 of the Forest (Conservation) Rules, 1981 prescribes the procedure for submission of proposals for seeking prior approval of the Central Government under Section 20 of the Act. The form appended to the Rules, specifies the particulars to be furnished with the proposal. Only proposal in the prescribed format, and complete in all respects, will be considered.
- (ii) All proposals relating to diversion of forest land up to 20 hectares and proposals for clearing of naturally grown trees for reforestation shall be sent directly to the concerned Regional Office of the MOEF. All other proposals shall be sent to Secretary to the Government of India, MOEF.
- (iii) Adverse recommendations of subordinate officers in prescribed form or in the documents attached with the form should invariably be commented upon by the Principal Chief Conservator of Forests/Chief Conservator of Forests. Similarly, adverse recommendation by the PCCF/CCF should be commented upon by the State Government to emphasise that a conscious decision has been taken in the matter.

2.2 Particulars to be Furnished along with the Proposal

- (i) Map of the forest area required showing boundary of the adjoining forests, etc., is to be furnished along with the prescribed form. This should nor-

mally be on 1:50,000 scale. However, if maps on 1:50,000 scale are not available, map on 1" = 1 mile or 1" = 4 miles or any other suitable scale would be acceptable. If the area is very small, an index map may be submitted showing forest boundaries and a location map on a larger scale with a land use of the area required.

- (ii) Species-wise and diameter class-wise abstract of trees to be felled should be furnished in the prescribed form. Total enumeration is necessary only up to 10 hectares. For larger areas, species-wise and diameter class-wise abstract of trees may be computed either from the working plans or by standard sampling methods.
- (iii) The projects for roads and railway line construction will be processed in their entirety. Therefore, proposals in piecemeal should not be submitted. A note on the present and future requirement of forest land is required to be submitted along with the proposal.
- (iv) The user agency shall submit the proposal for renewal of mining lease to the Forest Deptt. one year prior to date of expiry of existing lease, failing which the proposal may be liable for rejection. The State Govt. shall send, the complete proposal to the MOEF at least 6 months prior to the expiry of the existing lease. In case of any delay a detailed report elaborating the cause of delay shall be sent along with the proposal.
- (v) Special guidelines in regard to laying of transmission lines in forest area are at Annexure V.

2.3 Proposals Requiring Clearance from Environmental Angle

- (i) The projects covered under notifications issued from time to time under EPA Act 1986 shall require clearance separately from the environmental angle as per the procedure laid down, by the Environment Wing of MOEF. Environment clearance when required should be applied for separately and simultaneously.
- (ii) Notwithstanding the above, if in the opinion of the Ministry or the Advisory Committee, any proposal should be examined from the environment angle, it may be required that the project proponent refer the case to the Environment Wing of the MOEF.
- (iii) For projects requiring clearance from forest as well as environment angles, separate communications of sanction will be issued and the project would be deemed to be cleared only after clearance from both angles.

2.4 Simplified Procedure for Certain Categories of Proposals

- (i) In respect of proposals for laying of transportation lines, pipelines for drinking water supply and exploratory drilling for prospecting of oil which do not involve any felling or cutting of tree, only the following particulars may be furnished in the prescribed form:
 - (a) Map of the area required along with geographical location of the project
 - (b) Purpose for which forest land is required to be used.
 - (c) Extent of forest area to be diverted.
 - (d) Legal status of forest land.
 - (e) Whether forest land forms part of national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna.
 - (f) Whether no alternative alignment is possible to avoid or minimise use of forest land and, whether, the required forest area is the minimum needed for the purpose. A certificate in this regard is to be furnished by the concerned Divisional Forest Officer after personal inspection of the spot.

- (g) Compensatory afforestation scheme.
 - (h) A certificate stating specially that no cutting or felling of trees is involved.
- (ii) Other cases involving forest area up to 2 ha, which are devoid of tree cover, may also be dealt with as per above simplified procedure except for proposals for mining and regulation of encroachments.
- 2.5 **Diversion of Forest Land For Widening or Expansion or Realignment of Road/Rail/Canal**
Whenever diversion of protected or reserve forest land is required for realigning of road/rail/canal, permission would be granted subject to the condition that non-forest land saved on account of such realignment, would be declared as protected forest. The proposal from the State/Union Territory Government will have to be comprehensive indicating clearly the land asked for and saved on account of the proposed realignment of the road/rail/canal.
- 2.6 **Cost-Benefit Analysis**
 - (i) While considering proposals for dereservation or diversion of forest land for non-forest use, it is essential that ecological and environmental losses and socio-economic distress caused to the people who are displaced are weighed against economic and social gains.
 - (ii) Annexure VI (a) details the types of projects for which cost-benefit analysis will be required. Annexure VI (b) lists the parameters according to which the cost aspect will be determined, while Annexure VI (c) gives the parameters for assessing the benefits accruing.
 - (iii) A cost-benefit analysis as above should accompany the proposals sent to the Central Government for clearance under the Act.
- 2.7 **Plan for Rehabilitation of Outees**
 - (i) If the project involves displacement of people, a detailed Rehabilitation Plan shall be submitted along with the proposal for diversion of forest land. The Scheduled Tribe and Scheduled Caste population should be separately considered, and a plan for their rehabilitation should be in consonance with their socio-economic, cultural and emotional lifestyle.
 - (ii) The Government of India do not allow diversion of forest land for rehabilitation of people. However, such diversion may be considered as a special case, if diversion of forest land is essentially required for the rehabilitation of persons belonging to Schedule Tribes, Schedule Castes and other people who may have to be shifted from the core zone of a national park or reserve.
- 3. Compensatory Afforestation**
- 3.1 **Compensatory Afforestation**
 - (i) Compensatory afforestation is one of the most important conditions stipulated by the Central Government while approving proposals for dereservation or diversion of forest land for non-forest uses. It is essential that with all such proposals, a comprehensive scheme for compensatory afforestation is formulated and submitted to the Central Government.
 - (ii) The detailed compensatory afforestation scheme along with details of non-forest/degraded forest area identified for compensatory afforestation, map, etc., is required to be submitted in the prescribed form.
- 3.2 **Land for Compensatory Afforestation**
 - (i) Compensatory afforestation shall be done over equivalent area of non-forest land.
 - (ii) As far as possible, the non-forest land for compensatory afforestation should be identified contiguous to or in the proximity of Reserved Forest or

Protected Forest to enable the Forest Department to effectively manage the newly planted area.

- (iii) In the event that non-forest land of compensatory afforestation is not available in the same district, non-forest land for compensatory afforestation may be identified any-where else in the State/UT as near as possible to the site of diversion, so as to minimise adverse impact on the micro-ecology of the area.
- (iv) Where non-forest lands are not available or non-forest land is available in less extent to the forest area being diverted, compensatory afforestation may be carried out over degraded forest twice in extent to the area being diverted or to the difference between forest land being diverted and available non-forest land, as the case may be.
- (v) The non-availability of non-forest land for compensatory afforestation would be accepted by the Central Government only on the certificate from the Chief Secretary to the State/UT Government to that effect.
- (vi) As an exception to 3.2 (i) above, compensatory afforestation may be raised over degraded forest land twice in extent of the forest area being diverted/dereserved in respect of following types of proposals:-
 - (a) For extraction of minor minerals from the river beds. (However, if forest area to be diverted is above 500 hectares, compensatory afforestation over equivalent area of degraded forest shall be required to be done instead of twice the area being diverted subject to a minimum of 100 hectares compensatory afforestation).
 - (b) For construction of link roads, small water works, minor irrigation works, school building, dispensaries, hospital, tiny rural industrial sheds of the Government or any other similar work excluding mining and encroachment cases, which directly benefit the people of the area — in hill districts and in other districts having forest area exceeding 50% of the total geographical area provided diversion of forest area does not exceed 20 hectares.
 - (c) For laying of transmission lines up to 220 K.V.
 - (d) For mulberry plantation undertaken for silk-worm rearing without any felling of existing trees.
 - (e) For diversion of linear or 'strip' plantation declared as protected forest along the road/rail/canal sides for widening or expansion of road/rail/canal.
- (vii) No compensatory afforestation shall be insisted upon in respect of the following :-
 - (a) For clearing of naturally grown trees in forest land or in portion thereof for the purpose of using it for reforestation.
 - (b) Proposals involving diversion of forest land up to one hectare. (However, in such cases, plantation of ten times the number of trees likely to be felled will have to be carried out by way of compensatory afforestation or any number of trees specified in the order).
 - (c) Fur underground mining in forest land below 3 metres. (However, in respect of forest area required for surface right, compensatory afforestation shall be required as per relevant provisions).
 - (d) Cases of renewal of mining lease for the forest area already broken/used for mining of overburden, construction of roads, ropeway, building, etc. For the balance area compensatory afforestation shall be required to be done as stipulated, provided that no compensatory afforestation had been stipulated and done in respect of this area at the time of grant/renewal of lease earlier.

3.3 Elements of Schemes for compensatory afforestation

- (i) The Scheme of compensatory afforestation should contain the following details:-
 - (a) Details of equivalent non-forest or degraded forest land identified for raising compensatory afforestation.
 - (b) Delineation of proposed area on suitable map.
 - (c) Agency responsible for afforestation.
 - (d) Details of work schedule proposed for compensatory afforestation.
 - (e) Cost structure of plantation, provision of funds and the mechanism to ensure that the funds will be utilized for raising afforestation.
 - (f) Details of proposed monitoring mechanism.

3.4 Lands Identified for compensatory afforestation to be Transferred to the Forest Department

- (i) Equivalent non-forest land identified for the purpose are to be transferred to the ownership of the State Forest Department, and declared as protected forests so that the plantation raised can be maintained permanently. The transfer must take prior to the commencement of the project.
- (ii) The compensatory afforestation should clearly be an additional plantation activity and not a diversion of part of the annual plantation programme.
- (iii) In each case where the afforestation target is over 500 hectares in plains, and 200 hectares in hills, a Monitoring Committee shall be established with a nominee of the Central Government to oversee that the stipulations, including those pertaining to compensatory plantation are carried out.

3.5 Special Fund

- (i) The State/UT Government should create a special fund to which the individual user agency will make its deposits for compensatory afforestation. The Forest Department, or any other technically competent agency which is assigned the job of compensatory afforestation should fully utilise this amount for implementation of the afforestation scheme approved by the Government of India, and keep separate and meticulous account thereof.

4. Some Clarifications

4.1 Delegation of Powers

- (i) All proposals involving diversion/dereservation of forest land up to 20 hectares, and proposals for clearing of naturally grown trees in forest area or portion thereof shall be sent by the concerned State/UT Government to the concerned Regional Office of MOEF.
- (ii) Chief Conservator of Forests of the concerned Regional Office shall be competent to finally dispose of all proposals (including decision regarding violation of Act) involving diversion/dereservation of forest land up to 5 hectares, except in respect of proposals for regularisation of encroachments and mining (including renewal of mining leases). Similarly, proposals involving clearing of naturally grown trees in forest area or portion thereof for reforestation shall also be finally disposed of by the Chief Conservator of Forests of the concerned Regional Office, subject to guidelines/instructions issued in this regard (refer to para 1.8) and any other instructions issued from time to time.
- (iii) In the absence of Chief Conservator of Forests, these powers shall be exercised by the concerned Conservator of Forests of the Regional Office in case the post of Chief Conservator of Forests is vacant due to transfer, long leave, etc.
(In respect of Regional Office at Chandigarh, these powers shall be exercised by Conservator of Forests of the Regional Office of Chandigarh).

- (iv) A list of all cases finally disposed of and a list of cases rejected along with reasons thereof for rejection would be required to be sent every month to the MOEF by the Regional Office.
- (v) In respect of proposals involving diversion of forest area above 5 hectares and up to 20 hectares and all proposals for regularisation of encroachments and mining up to 20 ha., the proposals shall be examined by the Regional Chief Conservator of Forests/Conservator of Forests in consultation with an Advisory Group consisting of representatives of the State Government from Revenue Department, Forest Department, Planning and/or Finance Department and concerned Department whose proposal is being examined. The views of the Advisory Group shall be recorded by the Regional Chief Conservator of Forests and along with the same, the proposal shall be sent to Secretary, MOEF for consideration and final decision. It is to be clarified that views of this Advisory Group in no way shall be binding while deciding the proposals. The meeting of the Advisory Group may be held at the State Capital. The proposal will not be deferred for want of quorum.

4.2 Two Stage Clearance of Proposals

Forestry clearance will be given in two stages. In 1st stage, the proposal shall be agreed to in principle, and after receipt of compliance report from the State Government in respect of compliance of the stipulated conditions regarding transfer and mutation of non-forest area identified for compensatory afforestation, if any, and transfer of funds in favour of Forest Department, etc., formal approval under the Act shall be issued.

4.3 Anticipatory Action by the State/UT Governments

Cases have come to the notice of the Central Government in which permission for diversion of forest land was accorded by the concerned State Government in anticipation of approval of the Central Government under the Act and/or where work has been carried out in forest area without proper authority. Such anticipatory action is neither proper nor permissible under the Act which clearly provides for prior approval of the Central Government in all cases. Proposals seeking *ex post facto* approval of the Central Government under the Act are normally not entertained. The Central Government will not accord approval under the Act unless exceptional circumstances justify condonation. However, penal compensatory afforestation would be insisted upon by the MOEF on all such cases of condonation.

4.4 Projects Involving Forest as well as Non-forest Lands

Some projects involve use of forest land as well as non-forest land. State Governments/project authorities sometimes start work on non-forest lands in anticipation of the approval of the Central Government for release of the forest lands required for the projects. Though the provisions of the Act may not have technically been violated by starting of work on non-forest lands, expenditure incurred on works on non-forest lands may prove to be infructuous if diversion of forest land involved is not approved. It has, therefore, been decided that if a project involves forest as well as non-forest land, work should not be started on non-forest land till the approval of the Central Government for release of forest land under the Act has been given.

4.5 Diversion for Construction of Houses

- (i) On a proposal for construction of houses the late Prime Minister had observed :
 "Destruction of our forest has already caused great damage to our environment. Therefore, I am not at all in favour of use of forest land for con-

struction of houses... The State Government should find other land for such purposes."

The Central Government will not entertain any proposal for diversion of forest land for construction of residential or dwelling houses.

- (ii) Diversion of forest land for construction of other buildings also will not be normally considered. However, such diversion may be allowed for construction of school, hospitals/dispensaries, community halls, cooperatives, panchayats, tiny rural industrial sheds of the Government etc., which are to be put up for the benefit of the people of that area, but such diversion should be strictly limited to the actually needed area and further it should not exceed one hectare in each case..
- 4.6 Extraction of Minor Minerals from the River Beds
 - (i) Extraction of minor minerals like boulders, bajri, stone, shell etc., from the river beds shall not be permitted if the river bed is in a national park or a wildlife sanctuary unless such extraction is for the benefit of the forest or wildlife.
 - (ii) There shall be no labour camp in the forest area for the labour involved in the extraction work.
 - (iii) Extraction of minor minerals shall be from the middle of the river bed after leaving one fourth of the river bed on each bank untouched.
 - 4.7 Safety Zone for Mining Operations

Forest area required for safety zone for mining operations should not be part of the forest area proposed for diversion. However, it should be indicated separately in the proposal. Such area will have to be fenced at the cost of the project authority. Further, project authority will have to deposit funds with the Forest Department for the protection and regeneration of such safety zone area and also will have to bear the cost of afforestation over one and a half times of the safety zone area in degraded forest elsewhere.
 - 4.8 Catchment Area Treatment Plan for Irrigation Projects

Proposals for diversion of forest land for major and medium irrigation projects shall invariably be accompanied by detailed catchment area treatment plan. However, in respect of minor irrigation project, catchment area treatment plan will not be insisted.
 - 4.9 Special Arrangement in case of Large Projects

In case of large projects, depots for fuel wood should be set up by project authorities who will also arrange alternate fuel like coal, kerosene, biogas, LPG, electricity etc. The supply should be free of cost to the labourers and free or at subsidised rates to the other staff as may be determined by the project authorities.
 - 4.10 Site Inspection
 - (i) The proposed forest area shall be inspected by a responsible Forest Officer of the State Government. If the area is very important from the forestry angle, the territorial Conservator should himself inspect the area and give complete information relating to the forest and aspects of wildlife. The scientific names of important timber species should be given while describing composition of the forest crop. If the area is relatively less important, the DFO could inspect the area. The Inspecting Officers should clearly record in item 13 of the proforma if any violation is observed like tree felling, land breaking etc., in that area by the user agency. In any case the recommendations of the Chief Conservator of Forests should be categorical and specific and should be sent with photographs of inspected sites, highlighting the aspects observed, especially when the area is large or is sensitive and fragile.

- (ii) In respect of proposals involving diversion of forest land above 40 hectares, site inspection shall also be carried out by Regional Office of this Ministry. State/UT Governments are required to send copy of all such proposals to concerned Regional Office to facilitate timely inspection of such proposals.

4.11 Complete Details

While forwarding the proposal to the Central Government, complete details in all aspects of the case should be given. Incomplete and deficient proposal will not be considered and will be returned to the State Government in original.

4.12 Specific Time Limits

- (i) To ensure speedy disposal of proposals, specific time limits have to be laid down for disposal of references at various levels. Efforts should be made to dispose of each reference at the State Government level within a maximum period of 60 days. Specific instructions may be issued in this regard to officers at all levels.
- (ii) Cases which are complete in all respects shall be disposed of within 90 days by the Central Government.

4.13 Quarterly Progress Report

In all cases the States will submit quarterly reports regarding the implementation of the stipulations laid down by the Government of India while approving the project and future clearance of projects of the States and Union Territories concerned will depend upon the fulfilment of the stipulations.

4.14 Rejection/Reopening of Cases

In cases where the State Government is requested to furnish clarifications or additional information relating to proposal, all particulars should be made available to the Central Government within 60 days. If such particulars are not received within a maximum of 90 days, the proposal may be rejected by the Central Government for non-furnishing of essential information. Such cases could be reopened provided the following conditions are satisfied:

- (a) all the required information has been made available.
- (b) delay in providing the information is satisfactorily explained, and
- (c) there is no change in the proposal in terms of scope, purpose and other important aspects.

4.15 Nodal Officer

- (i) Separate cells for dealing with diversion of forest land cases should be opened at the State Government and PCCF levels. A whole-time senior officer not below the rank of Conservator of Forests should head the cell, who should be designated as the Nodal Officer.
- (ii) The Nodal Officer should receive cases from the user agencies and entertain all correspondence from them. He should scrutinise and process the case and after obtaining views/certificate of the Chief Conservator of Forests, should put up the case to State Government. Besides office staff, the Nodal Officer should also be given sufficient field staff to facilitate timely processing. The State Government while forwarding cases to the Central Government may endorse copies to the Chief Conservator of Forests and the Nodal Officer. The Central Government may also, while corresponding with the State Government, send copies to the Nodal Officer. The Nodal Officer should also obtain all additional information required by the Central Government about the proposals from the concerned authorities directly and endorse a copy directly to the Central Government.
- (iii) While approving a proposal the Government of India stipulates certain conditions to reduce the environmental damage on account of forest loss. The conditions must be enforced. Their non-compliance should be reported

by the Nodal Officer to Regional Office who should inspect the site from time to time.

- (iv) In case of opencast mining, it should be the responsibility of the Nodal Officer and his staff to ensure that all necessary inputs like creation of nursery, storage of top soil for reuse and methodology for its reforestation, choice of species etc. are so planned and implemented that the mined area is fully afforested by the time mining operations are completed.
 - (v) The Nodal Officer should monitor the implementation of the conditions of compensatory afforestation and the survival ratio of the seedlings planted.
- 4.16 The approval under the Forest (Conservation) Act, 1980 for diversion of forest land for grant/renewal for mining leases shall normally be granted for project co-terminus with the period of mining lease proposed to be granted/renewed under MMRD Act 1937 or Rules framed thereunder, but not exceeding 30 years. While recommending cases for approval under the Forest (Conservation) Act, the user agency/State Government shall indicate the period for which the mining lease is proposed to be granted/renewed under MMRD Act or Rules framed thereunder. However, in the event of non compliance of stipulations to the satisfaction of the MOEF, the clearance accorded may be summarily withdrawn.
- 4.17 In respect of renewal of mining leases, temporary working permission may be granted by the Central Government to continue working already broken up area upto a maximum period of one year, even without formal approval for the renewal, provided:
- (a) The user agency has submitted the required proposal with complete details to the Forest Department at least one year prior to the expiry of the existing lease period.
 - (b) The State Government has sent the formal proposal to the Central Government for renewal of mining lease prior to the expiry of the existing lease, along with particulars, and reports as are required to be furnished in the normal course of renewal.
 - (c) The temporary working permission will be confined to areas already broken up prior to the expiry of the lease, and no fresh area will be broken up until formal renewal is granted.

Forest (Conservation) Act, 1980 with Amendments made in 1988

An Act to provide for the conservation of forests and for matters connected therewith or ancillary or incidental thereto.

Be it enacted by Parliament in the Thirty-first year of the Republic of India as follows :

- (1) (1) This Act may be called the Forest (Conservation) Act, 1980. Short title, extent and commencement.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall be deemed to have come into force on the 25th day of October, 1980.
2. Notwithstanding anything contained in any other law for the time being in force in a State, No State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—Restriction on the dereservation of forests or use of forest land for non-forest purpose
 - (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
 - (ii) that any forest land or any portion thereof may be used for any non-forest purpose;
 - (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;
 - (iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation - For the purpose of this section, "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—

- (a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;
- (b) any purpose other than reafforestation;

but does not include any work relating or ancillary to conservation, development and management of forests and wildlife, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

3. The Central Government may constitute a Committee consisting of such number of persons as it may deem fit to advise that Government with regard to—

Constitution & Advisory Committee.

- (i) the grant of approval under section 2; and
- (ii) any other matter concerned with the conservation of forests which may be referred to it by the Central Government.

- 3A Whoever contravenes or abets the contravention of any of the provisions of Section 2, shall be punishable with simple imprisonment for a period which may extend to fifteen days.

Penalty for Contravention of the provisions of the Act.

- 3B (1) Where any offence under this Act has been committed—

Offences by authorities and Government departments

- (a) by any department of Government, the head of the department ; or
- (b) by any authority, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the authority for the conduct of the business of the authority as well as the authority;

shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render the head of the department or any person referred to in clause (b), liable to any punishment if it is proved that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1), where an offence punishable under the Act has been committed by a department of Government or any authority referred to in clause (b) of sub-section (1) and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, or in the case of any authority, any person, other than the persons, referred to in clause (b) of sub-section (1), such officer or persons shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- 4 (1) The Central Government may, by notification in the Official Gazette, makes rules for carrying out the provisions of this Act.

Power to make rules.

- (2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in

making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule. **Repeal and saving**

5. (1) The Forest (Conservation) Ordinance, 1980 is hereby repealed.
- (2) Notwithstanding such repeal, anything done or any action taken under the provisions of the said Ordinance shall be deemed to have been done or taken under the corresponding provisions of this Act.

Forest (Conservation) Rules, 1981
(as amended up to May 1992)

G.S.R. 719.... In exercise of the powers conferred by sub-section (1) of section 4 of the Forest (Conservation) Act, 1980 (69 of 1980), the Central Government hereby makes the following rules namely :—

1. Short title, extent and commencement. —
 - (a) These rules may called the Forest (Conservation) Rules, 1981.
 - (b) They shall extend to the whole of India except the State of Jammu and Kashmir.
 - (c) They shall come into force on the date of their publication in the Official Gazette.
2. Definitions. — In these rules, unless the context otherwise requires,—
 - (a) "Act" means the Forest (Conservation) Act, 1980 (69 of 1980)
 - (b) "Committee" means the Committee constituted under section 3
 - (c) "Chairman" means the Chairman of the Committee
 - (d) "Member" means a member of the Committee
 - (e) "Section" means a section of the Act

2A. (1) Composition of the Committee. — The Committee shall be composed of the following members:-

- | | |
|--|------------|
| (i) Inspector General of Forests | - Chairman |
| Ministry of Environment and Forests | |
| (ii) Additional Inspector General of Forests | - Member |
| Ministry of Environment and Forests | |
| (iii) Joint Commissioner (Soil Conservation) | - Member |
| Ministry of Agriculture | |
| (iv) Three eminent environmentalists | - Member |
| (non-officials) | |
| (v) Deputy Inspector General of Forests | - Member- |

Secretary

(Forest Conservation), Ministry of
Environment and Forests

(2) Additional Inspector General of Forests shall Act as the Chairman in the absence of Inspector General of Forest.

2B. Terms of appointment of non-official members shall be as follows :-

- (i) A non-official member shall hold his office for a period of two years.
- (ii) A non-official member shall cease to hold office if he dies, resigns, becomes of unsound mind, becomes insolvent or is convicted by a court of law on a criminal offence involving moral turpitude.
- (iii) Any vacancy in the membership caused by any reason mentioned in sub-rule (ii) shall be filled by the Government for the unexpired portion of 2 years term.
- (iv) Travelling and daily allowances shall be payable to the non-official members of the Committee at the highest rate admissible to the Government servants of Group 'A' under the rules and orders made by the Central Government and for the time being in force:

Provided that the payment of travelling allowance and daily allowance to a member who is a Member of the Parliament or a Member of State Legislature shall be regulated in accordance with the Salary, Allowance and Pension of Members of Parliament Act, 1954 or the respective provisions of law pertaining to the Members of the concerned State Legislature.

3. Conduct of business of the Committee. —

- (1) The chairman shall call the meeting of the Committee as often as necessary, but not less frequently than once in a month.
- (2) The meetings of the Committee shall normally be held at New Delhi. However, in a case where the Chairman is satisfied that inspection of site or sites of forest land proposed to be used for non-forest purposes would be necessary or expedient in connection with the consideration of the proposal or proposals received under sub-rule (1) of rule - 4, he may direct that the meetings of the Committee will be held at a place other than Delhi from where such inspection of site or sites can be undertaken conveniently.
- (3) The Chairman shall preside over every meeting of the Committee at which he is present :

Provided that if the Chairman is absent from a meeting and it is not expedient to adjourn the meeting, the senior-most member of the Committee shall preside over the meeting.

- (4) Every question upon which the Committee is required to advise shall be considered at its meeting provided that in urgent cases if the meeting of the Committee cannot be convened within a month, the Chairman may direct that necessary papers may be sent to the Members for their opinion by a stipulated date.
- (5) The quorum for the meeting of the Committee shall be three.

4.(1) Every State Government or other authority seeking the prior approval under section 2 shall send its proposal to the Central Government in the form appended to these rules :

Provided that all proposals involving clearing naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall be sent in the form of Working Plan / Management Plan.

- (2) Every proposal referred to in sub-rule (1) shall be sent to the following address, namely :-

Secretary to the Government of India
Ministry of Environment & Forests
Paryavaran Bhawan, CGO Complex
Lodi Road, New Delhi - 110003

Provided that all proposals involving forest land up to twenty hectares and proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall be sent to the Chief Conservator of Forests / Conservator of Forests of the concerned Regional Office of the Ministry of Environment and Forests.

5. Committee to advise on proposals received by the Central Government.—

- (1) The Central Government shall refer every proposal received by it under sub-rule (1) of rule 4 to the Committee for its advice thereon if the area of the forest land involved is more than twenty hectares:

Provided that proposals involving clearing of naturally grown trees in forest land or portion thereof for the purpose of using it for reafforestation shall not be referred to the Committee for its advice.

- (2) The Committee shall have due regard to all or any of the following matters while tendering its advice on the proposals referred to it under sub-rule (1), namely: —

- (a) Whether the forest land proposed to be used for non-forest purpose forms part of a nature reserve, national park, wildlife sanctuary, biosphere reserve or forms part of the habitat of any endangered or threatened species of flora and fauna or of an area lying in severely eroded catchment;

- (b) Whether the use of any forest land is for agricultural purposes or for the rehabilitation of persons displaced from their residences by reason of any river valley or hydro-electric project ;
 - (c) Whether the State Government or the other authority has certified that it has considered all other alternatives and that no other alternatives in the circumstances are feasible and that the required area is the minimum needed for the purpose; and
 - (d) Whether the State Government or the other authority undertakes to provide at its cost for the acquisition of land of an equivalent area and afforestation thereof.
- (3) While tendering the advice, the Committee may also suggest any conditions or restrictions on the use of any forest land for any non-forest purpose which, in its opinion, would minimize adverse environment impact.
- 6. Action of the Central Government on the advice of the Committee.— The Central Government shall, after considering the advice of the Committee tendered under rule 5 and after such further enquiry as it may consider necessary, grant approval to the proposal with or without conditions or reject the same.

FORM

Form for seeking prior approval under section 2 of the proposals by the State Government and other authorities. (See rule 4)

1. Project details :
 - (i) Short narrative of the proposal and project/scheme for which the forest land is required.
 - (ii) Map showing the required forest area, boundary of adjoining forest and item-wise break-up of the required forest area for different purposes (to be authenticated by an officer not below the rank of Deputy Conservator Forests).
 - (iii) Total cost of the project:
 - (iv) Justification for locating the project in the forest area giving alternatives examined and reasons for their rejection.
 - (v) Financial and social benefits.
 - (vi) Total population benefits.
 - (vii) Employment generated.
2. Location of the project/ scheme :
 - (i) State / Union Territory.
 - (ii) District
 - (iii) Forest Division, Forest Block, compartment etc.
3. Item-wise break-up of the total land required for the project/scheme along with its existing land use.....
4. Details of Forest land involved :
 - (i) Legal status of the forest (namely, reserve, protected/unclassified, etc.)
 - (ii) Details of flora and fauna existing in the area.
 - (iii) Density of vegetation
 - (iv) Species-wise and diameter class-wise abstract of trees.
 - (v) Vulnerability of the forest area to erosion, whether it forms a part of a seriously eroded area or not.
 - (vi) Whether it forms a part of national park, wildlife sanctuary, nature reserve, biosphere reserve, etc; and if so, details of the area involved. (specific comments of the Chief Wildlife Warden to be annexed).
 - (vii) Item-wise break-up of the forest land required for the project/scheme for different purposes.
 - (viii) Rare/endangered species of flora and fauna found in the area.
 - (ix) Whether it is a habitat for migrating fauna or forms a breeding ground for them.
 - (x) Any other significance of the area relevant to the proposal.
5. Details of displacement of people due to the project :
 - (i) Total number of families involved in displacement.
 - (ii) Number of Scheduled Caste/Scheduled Tribe families involved in displacement.
 - (iii) Detailed rehabilitation plan.
6. Details of compensatory afforestation scheme:
 - (i) Details of non forest area/degraded forest area identified for compensatory afforestation, its distance from adjoining forest, number of patches, size of each patch.
 - (ii) Map showing non-forest/degraded forest area identified for compensatory afforestation and adjoining forest boundaries.
 - (iii) Detailed compensatory afforestation scheme including species to be planted, implementing agency, time schedule, cost structure etc.
 - (iv) Total financial outlay, for compensatory afforestation scheme.

- (v) Certificate from competent authority regarding suitability of area identified for compensatory afforestation for afforestation and from management point of view. (To be signed by an officer not below the rank of Deputy Conservator of Forests).
- (vi) Certificate from the Chief Secretary regarding non-availability of the non-forest land for compensatory afforestation (if applicable).
- 7. Details regarding Transmission Lines (only for Transmission Line proposals) :
 - (i) Total length of the Transmission Line.
 - (ii) Length passing through forest area.
 - (iii) Right of way
 - (iv) Number of Towers to be erected.
 - (v) Number of Towers to be erected in forest area
 - (vi) Height of Transmission Towers.
- 8. Details of Irrigation Hydel Project (only for Irrigation/Hydel Projects) :
 - (i) Total catchment area.
 - (ii) Total command area.
 - (iii) Full Reservoir Level.
 - (iv) High Flood Level.
 - (v) Minimum Drawal Level.
 - (vi) Break-up of area falling in catchment area of the project (forest land, cultivated land, pasture land, human cultivation, others).
 - (vii) Area of submergence at High Flood Level.
 - (viii) Area of submergence at Full Reservoir Level.
 - (ix) Area of submergence at 2 metre below Full Reservoir Level.
 - (x) Area of submergence at 4 metre below Full Reservoir Level (For medium and major projects only).
 - (xi) Area of submergence at Minimum Drawal Level.
 - (xii) Detailed catchment area treatment plan.
 - (xiii) Total financial outlays and details regarding availability of funds for catchment area treatment plan.
- 9. Details regarding Road/Railway Lines (only for Roads/Railway Lines proposal) :
 - (i) Length and width of the strip and forest area required.
 - (ii) Total length of the road.
 - (iii) Length of the road already constructed.
 - (iv) Length of the road passing through the forest.
- 10. Details regarding mining proposals (only for mining proposals) :
 - (i) Total mining lease area and forest area required.
 - (ii) Period of mining lease proposed.
 - (iii) Estimated reserve of each mineral/ore in the forest area and in the non-forest area.
 - (iv) Annual estimated production of mineral/ore.
 - (v) Nature of mining operations (opencast/underground).
 - (vi) Phased reclamation plan.
 - (vii) Gradient of the area where mining would be undertaken.
 - (viii) Copy of the Lease Deed (to be attached only for renewal purposes).
 - (ix) Number of labourers to be employed.
 - (x) Area of forest land required for
 - (a) Mining
 - (b) Storing mineral/ore.
 - (c) Dumping of overburden.
 - (d) Storing tools and machinery.
 - (e) Construction of building power stations, workshops, etc.
 - (f) Township/housing colony

- (g) Construction of road/ropeway/railway lines.
- (h) Full land use plan of forest area required.
- (xi) Reasons why any of the activities, referred to in (a) to (h) above under the project for which forest land has been asked for cannot be undertaken/located outside forest area.
- (xii) The extent of damage likely to be caused and the number of trees affected on account of mining and related activities.
- (xiii) Distance of the mining area from perennial water courses, national and State highways, national parks, sanctuaries and biosphere reserves.
- (xiv) Procedure for stocking of the topsoil for reuse.
- (xv) Extent of subsidence expected in underground mining operations and its impact on water, forest and other vegetation.
- 11. Cost-benefit analysis.
- 12. Whether clearance from environmental angle is required (Yes/No).
If yes, whether, requisite details for the same have been furnished (Yes/No).
- 13. Whether any work in violation of the Act has been carried out (Yes/No).
If yes,
 - (i) Details of the same including date of commencement.
 - (ii) Officers responsible for violation of the Act.
 - (iii) Action taken/being taken against erring officers.
 - (iv) Whether work in violation of the Act is still in progress.
- 14. Any other information.....
- 15. Details of Certificates / documents enclosed.
- 16. Detailed opinion of the Chief Conservator of Forests/Head of the Forest Department concerned covering the following aspects, namely :
 - (i) Out-turn of timber, fuelwood and other forest produce from the forest land involved.
 - (ii) Whether the district is self-sufficient in timber and fuelwood, and
 - (iii) The effect of the proposal on
 - (a) Fuelwood supply to rural population
 - (b) Economy and livelihood of the tribals and backward communities.
 - (iv) Specific recommendations of the Chief Conservator of Forests/Head of the Forest Department for acceptance or otherwise of the proposal with reasons thereof.

Certified that all other alternatives for the purpose have been explored and the demand for the required area is the minimum demand for forest land.

Signature of the authorised officer
of the State Government / Authority

- N.B.1. While furnishing details of flora and fauna, the species should be described by their scientific names.
- N.B.2. If the space provided above is not sufficient to specify any information, please attach separate details/documents.

(No. 5-5/86-1-C)
R. RAJAMANI, Secy.

The principal rules were notified vide Number G.S.R. 719 dated the 20th July, 1981 and subsequently amended vide

- (1) G.S.R. 14, dated the 28th December, 1987
- (2) G.S.R. 640 (E), dated the 26th June, 1989

**LAW DEPARTMENT'S ADVICE
IN REGARD TO MINING LEASES**

- i. In respect of the mining operations being carried out on forest lands leased before the commencement of the Forest (Conservation) Act, 1980 during the continuance of the lease period, the approval of the Central Govt. under Section 2 of the said Act is not required.
- ii. A renewal of a lease is really the grant of a fresh lease. (See Delhi Development Authority Vs. Durga Chand Kaushik, AIR 1973 SC 2609). The prior approval of the Central Govt. in terms of section 2 of the Forest (Conservation) Act, 1980 would be required when a mining lease granted before the commencement of the said Act is renewed after its coming into force.
- (iii) As held by the Supreme Court in State of Bihar Vs. Banshi Ram Modi (*supra*), prior approval of the Central Govt. in terms of section 2 of the Forest (Conservation) Act, 1980 would not be required for mining and winning any new mineral from a forest land leased for mining before the commencement of the said Act during the lease period originally granted, if the said land is already broken up or cleared before the commencement of the Act, otherwise, the prior approval of the Central Govt. under Section 2 of the said Act would be required.

REGULARISATION OF ENCROACHMENTS OF FOREST LAND

1. Encroachments of forest land for cultivation and other purposes continues to be the most pernicious practice endangering forest resources throughout the country. Statistical information compiled by Ministry of Agriculture during early 1980s revealed that nearly 7 lakh hectares of forest land was under encroachments in the country about a decade back. This is despite the fact that prior to 1980, a number of States had regularised such encroachments periodically and approximately 43 lakh hectares of forest land was diverted for various purposes between 1951 and 1980, more than half of it for agriculture. The decisions of the State Government to regularise encroachment from time to time seem to have acted as strong inducement for further encroachments in forest areas and the problem remained as elusive as ever for want of effective and concerted drive against this evil practice.
2. The National Forest Policy, 1988 has also observed the increasing trend in encroachments on forest land and stated that these should not be regularised. Implementation of this pronouncement has been examined by this Ministry keeping in view the constraints of various State Governments some of whom have expressed that they stand committed to regularise encroachments of a period prior to 1980. The issue figured prominently in the Conference of the Forest Ministers' held in May, 1989 and was later examined by an Inter-Ministerial Committee, set up by this Ministry in consultation with the representatives of some of the States. Keeping in view the recommendations of the Forest Ministers Conferences and the Committee referred to above, and with due approval of the competent authority, the following measures are suggested for review of the old encroachments and effective implementation of pronouncement made in this regard in the National Forest Policy, 1988.
 - 2.1 All the cases of subsisting encroachments where the State Governments stand committed to regularise on account of past commitments may be submitted to this Ministry for seeking prior approval under the Forest (Conservation) Act, 1980. Such proposals should invariably conform to the criteria given below :
 1. PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENT HAD TAKEN A DECISION BEFORE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980, TO REGULARIZE 'ELIGIBLE' CATEGORY OF ENCROACHMENTS'
 - 1.1 Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularise such encroachments but could not implement their decision either wholly or partially before the enactment of the Forest (Conservation) Act, on 25.10.80
 - 1.2 All such cases should be individually reviewed. For this purpose the State Government may appoint a joint team of the Revenue, Forest and Tribal Welfare Departments for this work and complete it as a time-bound programme.
 - 1.3 In case where proposals are yet to be formulated, the final picture after taking into considerations all the stipulations specified here may be placed, before the concerned Gaon Sabha with a view to avoid disputes in future.
 - 1.4 All encroached lands proposed for regularisation should be properly surveyed.
 - 1.5 Encroachments proposed to be regularised must have been taken place before 25.10.1980. This must be ascertained from the First Of-

fence Report issued under the relevant Forest Act at that point of time.

- 1.6 Encroachments must subsist on the field and the encroached land must be under continuous possession of the encroachers.
- 1.7 The encroacher must be eligible to avail the benefits of regularisation as per the eligibility criteria already fixed by the State.
- 1.8 As far as possible scattered encroachments proposed to be regularised should be consolidated/relocated near the outer boundaries of the forests.
- 1.9 The outer boundaries of the areas to be denotified for regularisation of encroachments should be demarcated on the ground with permanent boundary marks.
- 1.10 All the cases proposed to be regularised under this category should be covered in one proposal and it should give district wise details.
- 1.11 All the cases of proposed encroachments should be accompanied by a proposal for compensatory afforestation as per existing guidelines.
- 1.12 No agriculture practices should be allowed on certain specified slopes.
2. 'INELIGIBLE' CATEGORY OF PRE-1980 ENCROACHMENTS WHERE THE STATE GOVERNMENTS HAD TAKEN A DECISION PRIOR TO THE ENACTMENT OF THE FOREST (CONSERVATION) ACT, 1980.
- 2.1 Such cases should be treated at par with post 1980 encroachments and should not be regularised.
3. ENCROACHMENTS THAT TOOK PLACE AFTER 24.10.1980
- 3.1 In no case encroachments which have taken place after 24.10.1980 should be regularised. Immediate action should be taken to evict the encroachers. The State/UT Government may, however, provide alternate economic base to such persons by associating them collectively in afforestation activities in the manner suggested in this Ministry's letter No. 6-21/89-FP dated 1.6.90, but such benefits should not extend to fresh encroachers.

CLARIFICATION

A reference is invited to the guidelines issued by this Ministry for regularisation of certain cases of forest encroachments reproduced above. The relevant paragraph 1.1 of the guidelines, which clarifies the cases of encroachments, which subject to specified conditions, would be eligible for regularisation, is reproduced below :

"Such cases are those where the State Governments had evolved certain eligibility criteria in accordance with local needs and conditions and had taken a decision to regularise such encroachments but could not implement their decisions either wholly or partially before enactment of the Forest (Conservation) Act on 25.10.1980.

2. Doubts have been raised as to whether all encroachments that had taken place up to 25.10.1980 could be regularised in accordance with an eligibility formula by which some earlier encroachment were regularised.
3. A perusal of the paragraph reproduced above will make it clear that there are 2 pre-conditions for any encroachments to be considered for regularisation. These are :-
 - (a) The State Government should have taken the decision on regularisation of encroachments before 25.10.1980; and
 - (b) that the decision should be with reference to some eligibility criteria (normally expected to be related to social and economic status of encroachers, location and extent of encroachment, cut off date of encroachment, etc.,)
4. It would be seen that the encroachments which are proposed to be considered for regularisation, subject to the prescribed conditions, are those which fulfilled the eligibility criteria evolved by the State Government as per decision taken before

25.10.1980 for regularisation of encroachments. The objective is limited to permitting implementation of decisions taken before 25.10.1980 which could not be implemented because the enactment of Forest (Conservation) Act, 1980 intervened. It is therefore quite clear that while all encroachments that can be considered as eligible for regularisation would have taken place before 25.10.1980, all encroachments that had taken place before 25.10.1980 would not be eligible for regularisation — they may be ineligible because either they do not meet the eligibility criteria or are not covered by any decision taken before 24.10.1980. Thus, if the decision on regularisation of encroachments in a State covered only encroachments up to a date earlier than 25.10.1980 the guidelines on regularisation of encroachments do not envisage that the State Government would now survey encroachments before that date and 25.10.1980 and propose regularisation. The latter encroachments though accruing before 25-10-1988 are not covered by any regularisation decision taken prior to that date and hence cannot be considered for regularisation at this juncture.

5. Accordingly, the State Governments may take up for implementation only such decision of pre 25.10.1980 period which could not be implemented because of Forest (Conservation) Act, 1980 intervening and propose regularisation of encroachments as per those decisions and in accordance with the eligibility criteria laid down in those decision. No. encroachments not covered by any pre 25.10.1980 decisions — even though they might have occurred prior to that date — should now be considered for regularisation in terms of our guidelines.

**GUIDELINES FOR LAYING TRANSMISSION LINES
THROUGH FOREST AREAS**

1. Where routing of transmission lines through the forest areas cannot be avoided, these should be alighted in such a way that it involves the least amount of tree cutting.
2. As far as possible, the route alignment through forest areas should not have any line deviation.
3. (i) The maximum width of right of way for the transmission lines on forest land shall be as follows :

	Transmission Voltage (KV)	Width of Right of Way
(Mts)	11	7
	33	15
	66	18
	110	22
	132	27
	220	35
	400	52
	800	85

- (ii) Below each conductor, width clearance of 3 mts. would be permitted for taking the tension stringing equipment. The trees on such strips would have to be felled but after stringing work is completed, the natural regeneration will be allowed to come up. Felling/pollarding/pruning of trees will be done with the permission of the local forest officer whenever necessary to maintain the electrical clearance. One outer strip shall be left clear to permit maintenance of the transmission line.
- (iii) In the remaining width the right of way up to a maximum of 85 metres (for 800 KV lines) trees will be felled or lopped to the extent required, for preventing electrical hazards by maintaining the following :

	Voltage (KV)	Minimum Clearance between conductors and trees
(Mts.)	11	2.6
	33	2.8
	66	3.4
	110	3.7
	132	4.0
	220	4.6
	400	5.5

The sag and swing of the conductors are to be kept in view while working out the minimum clearance mentioned as above.

- (iv) In the case of transmission lines to be constructed in hilly areas, where adequate clearance is already available, trees will not be cut.
4. Where the forest growth consists of coconut groves or similar tall trees, widths of right of way greater than those indicated at Sl. No. 3 may be permitted in consultation with the CEA.

Category of Proposals for which Cost-benefit Analysis is Applicable

Sl. No.	Nature of Proposal	Applicable / not applicable	Remarks
1.	All categories of proposals involving forest land up to 20 hectares in plains and up to 5 hectares in hills.	Not applicable	These proposals are to be considered on case by case basis and value judgement.
2.	Proposal for defence installation purposes and oil prospecting (prospecting only)	Not applicable	In view of National Priority accorded to these sectors, the proposals would be critically assessed to help ascertain that the utmost minimum forest land above is diverted for non-forest use.
3.	Habitation, establishment of industrial units, tourist lodges/ complex and other building construction	Not applicable	These activities being detrimental to protection and conservation of forest, as a matter of policy, such proposals would be rarely entertained.
4.	All other proposals involving forest land more than 20 hectares in plains and more than 5 ha. in hills including roads, transmission lines, minor, medium and major irrigation projects, hydel projects, mining activity, railway lines, location specific installations like micro-wave stations, auto repeater centres, T.V. towers etc.	Applicable	These are cases where a cost-benefit analysis is necessary to determine when diverting the forest land to non-forest use is in the overall public interests.

Parameters for Evaluation of Loss of Forests

SL. No.	Parameters	Nature of Proposal		
		Roads, Tr Lines & Railway lines	Minor Irrigation projects, quarrying of stones/metals	Medium & major Irrigation, hydro electric, large mining & other Misc. projects
1	2	3	4	5
1.	Loss of value of timber, fuelwood and minor forest produce on an annual basis including loss of man-hours per annum of people who derived livelihood and wages from the harvest of these commodities	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms
2.	Loss of animal husbandry productivity, including loss of fodder	-do-	-do-	-do-
3.	Cost of human resettlement	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms
4.	Loss of public facilities and administrative infrastructure (Roads, buildings, schools, dispensaries, electric lines, railway etc) on forest land, or which would require forest due to project.	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms
5.	Environmental losses : (Soil erosion, effect on hydrological cycle, wildlife habitat, microclimate upsetting of ecological balance).		Though technical judgement would be primarily applied in determining the losses, as a thumb rule the environmental value of one hectare of fully stocked forest (density 1.0) would be taken as Rs. 126.74 lakhs to accrue over a period of 50 years. The value will	

reduce with density, for example, if density is 0.4, the value will work out at Rs. 50.696 lakhs. So, if a project which requires deforestation of 1 hectare of forest of density 0.4 gives monetary returns worth over Rs. 50.696 lakhs over a period of 50 years, may be considered to give a positive cost benefit ratio. The figure of assumed environmental value will change if there is an increase in bank rate; the change will be proportional to percentage increase in the bank rate.

Suffering to oustees

The social cost of rehabilitation of an oustee (in addition to the cost likely to be incurred in providing residence, occupation and social services to him) be worked out as 1.5 times of what he should have earned in two years had he been not shifted.

Parameters for Evaluation of Benefit, notwithstanding Loss of Forests

Sl.	Parameters & Railway lines	Nature of proposal		
		Roads, Tr. lines	Minor projects projects & others	Irrigation/hydel No.
1.	Increase in productivity attributable to the specific project	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms
2.	Benefits to economy	Value judgement	-do-	-do-
3.	No. of population benefited	-do-	Value judgement	Value judgement
4.	Employment potential	-do-	-do-	-do-
5.	Cost of acquisition of facility on non-forest land wherever feasible	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms
6.	Loss of (a) agriculture & (b) animal husbandry production due to diversion of forest land	-do-	-do-	-do-
7.	Cost of rehabilitating the displaced persons as different from compensatory amounts given for displacement	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms	To be quantified & expressed in monetary terms
8.	Cost of supply of free fuel-wood to workers residing in or near forest area during the period of construction.	-do-	-do-	-do-

NATIONAL FOREST POLICY, 1988**1. PREAMBLE**

1.1 In Resolution No. 13/52/F, dated the 12th May, 1952, the Government of India in the erstwhile Ministry of Food and Agriculture enunciated a Forest Policy to be followed in the management of State Forests in the country. However, over the years, forests in the country have suffered serious depletion. This is attributable to relentless pressures arising from ever-increasing demand for fuel wood, fodder and timber; inadequacy of protection measures; diversion of forest lands to non-forest uses without ensuring compensatory afforestation and essential environmental safeguards; and the tendency to look upon forests as revenue earning resource. The need to review the situation and to evolve, for the future, a new strategy for forest conservation has become imperative. Conservation includes preservation, maintenance, sustainable utilisation, restoration, and enhancement of the natural environment. It has thus become necessary to review and revise the National Forest Policy.

2. BASIC OBJECTIVES

2.1 The basic objectives that should govern the National Forest Policy are the following :-

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Checking soil erosion and denudation in the catchment areas of rivers, lakes, reservoirs in the interest of soil and water conservation, for mitigating floods and droughts and for the retardation of siltation of reservoirs.
- Checking the extension of sand-dunes in the desert areas of Rajasthan and along the coastal tracts.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

2.2 The principal aim of Forest Policy must be to ensure environmental stability and maintenance of ecological balance including atmospheric equilibrium which are vital for sustenance of all life forms, human, animal and plant. The derivation of direct economic benefit must be subordinated to this principal aim.

3. ESSENTIALS OF FOREST MANAGEMENT

3.1 Existing forests and forest lands should be fully protected and their productivity improved. Forest and vegetal cover should be increased rapidly on hill slopes, in catchment areas of rivers, lakes and reservoirs and ocean shores and on semi-arid, arid and desert tracts.

3.2 Diversion of good and productive agricultural lands to forestry should be discouraged in view of the need for increased food production.

3.3 For the conservation of total biological diversity, the network of national parks, sanctuaries, biosphere reserves and other protected areas should be strengthened and extended adequately.

3.4 Provision of sufficient fodder, fuel and pasture, specially in areas adjoining forest, is necessary in order to prevent depletion of forests beyond the sustainable limit. Since fuel wood continues to be the predominant source of energy in rural areas, the programme of afforestation should be intensified with special emphasis on augmenting fuelwood production to meet the requirement of the rural people.

3.5 Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income.

4. STRATEGY

4.1 Area under Forests

The national goal should be to have a minimum of one-third of the total land area of the country under forest or tree cover. In the hills and in mountainous regions, the aim should be to maintain two-third of the area under such cover in order to prevent erosion and land degradation and to ensure the stability of the fragile eco-system.

4.2 Afforestation, Social Forestry & Farm Forestry

4.2.1 A massive need-based and timebound programme of afforestation and tree planting, with particular emphasis on fuelwood and fodder development, on all degraded and denuded lands in the country, whether forest or non-forest land, is a national imperative.

4.2.2 It is necessary to encourage the planting of trees alongside of roads, railway lines, rivers and streams and canals, and on other unutilised lands under State/Corporate, institutional or private ownership. Green belts should be raised in urban/industrial areas as well as in arid tracts. Such a programme will help to check erosion and desertification as well as improve the micro-climate.

4.2.3 Village and community lands, including those on foreshores and environs of tanks, not required for other productive uses, should be taken up for the development of tree crops and fodder resources. Technical assistance and other inputs necessary for initiating such programmes should be provided by the Government. The revenues generated through such programmes should belong to the panchayats where the lands are vested in them; in all other cases, such revenues should be shared with the local communities in order to provide an incentive to them. The vesting, in individuals, particularly from the weaker sections (such as landless labour, small and marginal farmers, scheduled castes, tribals, women) of certain ownership rights over trees, could be considered, subject to appropriate regulations; beneficiaries would be entitled to usufruct and would in turn be responsible for their security and maintenance.

4.2.4 Land laws should be so modified wherever necessary so as to facilitate and motivate individuals and institutions to undertake tree-farming and grow fodder plants, grasses and legumes on their own land. Wherever possible, degraded lands should be made available for this purpose either on lease or on the basis of a tree-patta scheme. Such leasing of the land should be subject to the land grant rules and land ceiling laws. Steps necessary to encourage them to do so must be taken. Appropriate regulations should govern the felling of trees on private holding.

4.3 Management of State Forest

4.3.1 Schemes and projects which interfere with forests that clothe steep slopes, catchments of rivers, lakes, and reservoirs, geologically unstable terrain and such other ecologically sensitive areas should be severely restricted. Tropical rain/moist forests, particularly in areas like Arunachal Pradesh, Kerala, Andaman & Nicobar Islands, should be totally safeguarded.

4.3.2 No forest should be permitted to be worked without the Government having approved the management plan, which should be in a prescribed format and in keeping with the National Forest Policy. The central Government should issue necessary guidelines to the State Government in this regard and monitor compliance.

4.3.3 In order to meet the growing needs for essential goods and services which the forests provide, it is necessary to enhance forest cover and productivity of the forests through the application of scientific and technical inputs. Production forestry programmes, while aiming at enhancing the forest cover in the country, and meeting national needs, should also be oriented to narrowing, by the turn of the century, the increasing gap between demand and supply of fuelwood. No such programme, however, should entail clear-felling of adequately stocked natural forests. Nor should exotic species be introduced, through public or private sources, unless long-term scientific trials undertaken by specialists in ecology, forestry and agriculture have established that they are suitable and have no adverse impact on native vegetation and environment.

4.3.4 Rights and Concession

4.3.4.1 The rights and concessions, including grazing, should always remain related to the carrying capacity of forests. The capacity itself should be optimised by increased investment, silvicultural research and development of the area. Stall-feeding of cattle should be encouraged. The requirements of the community, which cannot be met by the rights and concessions so determined, should be met by development of social forestry outside the reserved forests.

4.3.4.2 The holders of customary rights and concessions in forest areas should be motivated to identify themselves with the protection and development of forests from which they derive benefits. The rights and concessions from forests should primarily be for the bonafide use of the communities living within and around forest areas, specially the tribals.

4.3.4.3 The life of tribals and other poor living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.

4.3.4.4 Similar consideration should be given to scheduled castes and other poor living near forests. However, the area, which such consideration should cover, would be determined by the carrying capacity of the forests.

4.3.5 Wood is in short supply. The long-term solution for meeting the existing gap lies in increasing the productivity of forests, but to relieve the existing pressure on forests for the demands of railway sleepers, construction industry (particularly in the public sector), furniture and panelling, mine-pit props, paper and paper board etc. substitution of wood needs to be taken recourse to. Similarly, on the front of domestic energy, fuelwood needs to be substituted as far as practicable with alternate sources like bio-gas, LPG and solar energy. Fuel-efficient 'Chulhas' as a measure of conservation of fuelwood need to be popularised in rural areas.

4.4 Diversion of Forest Lands for Non-forest purposes.

4.4.1 Forest land or land with tree cover should not be treated merely as a resource readily available to be utilised for various projects and programmes, but as a national asset which requires to be properly safeguarded for providing sustained benefits to the entire community. Diversion of forest land for any non-forest purpose should be subject to the most careful examinations by specialists from the standpoint of social and environmental costs and benefits. Construction of dams and reservoirs, mining and industrial development and expansion of agriculture should be consistent with the needs for conservation of trees and forests. Projects which involve such diversion

should at least provide in their investment budget, funds for regeneration/compensatory afforestation.

4.4.2 Beneficiaries who are allowed mining and quarrying in forest land and in land covered by trees should be required to repair and re-vegetate the area in accordance with established forestry practices. No mining lease should be granted to any party, private or public, without a proper mine management plan appraised from the environmental angle and enforced by adequate machinery.

4.5 Wildlife Conservation

Forest Management should take special care of the needs of wildlife conservation, and forest management plans should include prescriptions for this purpose. It is specially essential to provide for "corridors" linking the protected areas in order to maintain genetic continuity between artificially separated sub-sections of migrant wildlife.

4.6 Tribal People and Forests.

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following :-

- One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- Development of forest villages on par with revenue villages;
- Family oriented schemes for improving the status of the tribal beneficiaries; and
- Undertaking integrated area development programmes to meet the needs of the tribal economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.

4.7 Shifting Cultivation

Shifting cultivation is affecting the environment and productivity of land adversely. alternative avenues of income, suitably harmonised with the right landuse practices, should be devised to discourage shifting cultivation. Efforts should be made to contain such cultivation within the area already affected, by propagating improved agricultural practices. Area already damaged by such cultivation should be rehabilitated through social forestry and energy plantations.

4.8 Damage to Forests from Encroachments, Fires and Grazing

4.8.1 Encroachment on forest lands has been on the increase. This trend has to be arrested and effective action taken to prevent its continuance. There should be no regularisation of existing encroachments.

4.8.2 The incidence of forest fires in the country is high. Standing trees and fodder are destroyed on a large scale and natural regeneration annihilated by such fires. Special precautions should be taken during the fire season. Improved and modern management practices should be adopted to deal with forest fires.

4.8.3 Grazing in forest areas should be regulated with the involvement of the community. Special conservation areas, young plantations and regeneration areas should be fully protected. Grazing and browsing in forest areas need to be controlled. Adequate grazing fees should be levied to discourage people in forest areas from maintaining large herds of non-essential livestock.

4.9 Forest-based Industries

The main considerations governing the establishment of forest-based industries and supply of raw material to them should be as follows :

- As far as possible, a forest-based industry should raise the raw material needed for meeting its own requirements, preferably by establishment of a direct relationship between the factory and the individuals who can grow the raw material by supporting the individuals with inputs including credit, constant technical advice and finally harvesting and transport services.
- No forest-based enterprise, except that at the village or cottage level, should be permitted in the future unless it has been first cleared after a careful scrutiny with regard to assured availability of raw material. In any case, the fuel, fodder and timber requirements of the local population should not be sacrificed for this purpose.
- Forest-based industries must not only provide employment to local people on priority but also involve them fully in raising trees and raw-material.
- Natural forests serve as a gene pool resource and help to maintain ecological balance. Such forests will not, therefore, be made available to industries for undertaking plantation and for any other activities.
- Farmers, particularly small and marginal farmers, would be encouraged to grow, on marginal/degraded lands available with them, wood species require for industries. These may also be grown along with fuel and fodder species on community lands not required for pasture purposes, and by Forest department/corporations on degraded forests, not earmarked for natural regeneration.
- The practice of supply of forest produce to industry at concessional prices should cease. Industry should be encouraged to use alternative raw materials. Import of wood and wood products should be liberalised.
- The above considerations will, however, be subject to the current policy relating to land ceiling and land-laws.

4.10 Forest Extension

Forest conservation programme cannot succeed without the willing support and cooperation of the people. It is essential, therefore, to inculcate in the people, a direct interest in forests, their development and conservation, and to make them conscious of the value of trees, wildlife and nature in general. This can be achieved through the involvement of educational institutions, right from the primary stage. Farmers and interested people should be provided opportunities through institutions like Krishi Vigyan Kendras, Trainers' Training Centres to learn agrisilvicultural and silvicultural techniques to ensure optimum use of their land and water resources. Short term extension courses and lectures should be organised in order to educate farmers. For this purpose, it is essential that suitable programmes are propagated through mass media, audio-visual aids and the extension machinery.

4.11 Forestry Education

Forestry should be recognised both as a scientific discipline as well as a profession. Agriculture universities and institutions dedicated to the development of forestry education should formulate curricula and courses for imparting academic education and promoting post-graduate research and professional excellence, keeping in view the manpower needs of the country. Academic and professional qualifications in forestry should be kept in view for recruitment to the Indian Forest Service and the State Forest Service. Specialised and orientation courses for developing better management skills by inservice training need to be encouraged, taking into account the latest development in forestry and related disciplines.

4.12 Forestry Research

With the increasing recognition of the importance of forests for environmental health, energy and employment, emphasis must be laid on scientific forestry research, necessitating adequate strengthening of the research base as well as new priorities for action. Some broad priority areas of research and development needing special attention are :-

- i) Increasing the productivity of wood and other forest produce per unit of area per unit time by the application of modern scientific and technological methods.
- ii) Revegetation of barren/marginal/waste/mined lands and watershed areas.
- iii) Effective conservation and management of existing forest resources (mainly natural forest eco-systems).
- iv) Research related to social forestry for rural/tribal development.
- v) Development of substitutes to replace wood and wood products.
- vi) Research related to wildlife and management of national parks and sanctuaries.

4.13 Personnel Management

Government policies in personnel management for professional foresters and forest scientists should aim at enhancing their professional competence and status and attracting and retaining qualified and motivated personnel, keeping in view particularly the arduous nature of duties they have to perform, often in remote and inhospitable places.

4.14 Forest Survey and Data Base

Inadequacy of data regarding forest resources is a matter of concern because this creates a false sense of complacency. Priority needs to be accorded to completing the survey of forest resources in the country on scientific lines and to updating information. For this purpose, periodical collection, collation and publication of reliable data on relevant aspects of forest management needs to be improved with recourse to modern technology and equipment.

4.15 Legal Support and Infrastructure Development

Appropriate legislation should be undertaken, supported by adequate infrastructure, at the Centre and State levels in order to implement the Policy effectively.

4.16 Financial Support for Forestry

The objectives of this revised Policy cannot be achieved without the investment of financial and other resources on a substantial scale. Such investment is indeed fully justified considering the contribution of forests in maintaining essential ecological processes and life-support systems and in preserving genetic diversity. Forests should not be looked upon as a source of revenue. Forests are a renewable natural resource. They are a national asset to be protected and enhanced for the well being of the people and the Nation.

(K.P. Geethakrishnan)
Secretary to the Government of India

GOVT. OF INDIA GUIDELINES FOR PARTICIPATORY FOREST MANAGEMENT

No. 6-21/89-P.P

GOVERNMENT OF INDIA

Ministry of Environment and Forests
Department of Environment, Forests and Wildlife
Paryavaran Bhavan, C.G.O. Complex, B-Block

Lodi Road, New Delhi.

Dated : 1st June, 1990

To,
The Forest Secretaries
(All States/UTs)

Subject : Involving of village communities and voluntary agencies for regeneration of degraded forest lands.

Sir,

The National Forest Policy, 1988 envisages people's involvement in the development and protection of forests. The requirements of fuelwood, fodder and small timber such as house building material, of the tribals and other villagers living in and near the forests, are to be treated as first charge on forest produce. The policy document envisages, it as one of the essentials of forest management that the forest communities should be motivated to identify themselves with the development and protection of forests from which they derive benefits.

2. In a D.O. letter No. 1/188-TMA dated 13th January, 1989 to the Chief Secretary of your State, the need for working out the modalities for giving to the village communities, living close to the forest land, usufructory benefits to ensure their participation in the afforestation programme, was emphasized by Shri K.P. Geethakrishnan, the then Secretary (Environment and Forests).

3. Committed Voluntary Agencies/NGOs, with proven track record, may prove particularly well suited for motivating and organising village communities for protection, afforestation, and development of degraded forest land, especially in the vicinity of habitations. The State Forest Department's Social Forestry Organization ought to take full advantage of their expertise and experience in this respect for building up meaningful people's participation in protection and development of degraded forest lands. The Voluntary Agencies/NGOs may be associated as interface between State Forest Departments and the local village communities for revival, restoration and development of degraded forests in the manner suggested below:

- i) The programme, should be implemented under an arrangement between the Voluntary Agency/NGO, the village community (beneficiaries) and the State Forest Department.
- ii) No ownership or rights over the forest land should be given to the beneficiaries or to the Voluntary Agency/NGO. Nor should the forest land be assigned in contravention of the provisions contained in the Forest (conservation) Act, 1980.
- iii) The beneficiaries should be entitled to a share i usufructs to the extent and subject to the conditions prescribed by the State Government in this behalf. The Voluntary Agency/NGO should not be entitled to usufructory benefits.
- iv) Access to forest land and usufructory benefits should be only to the beneficiaries who get organized into a village institution, specifically for forest regeneration and protection. This could be the panchayat or the Co-operative of the village, with no restriction on membership. It could also be a Village Forest Committee. In no case should any access or tree pattas be given to individuals.
- v) The beneficiaries should be given usufructs like grasses, lops and tops of branches, and minor forest produce. If they successfully protect the forests, they may be given a portion of the proceeds from the sale of trees when they mature. The Government of West Bengal has issued order to give 25% of the sale proceeds to

the Village Forest Protection Committees. Similar norms may be adopted by other States.

- vi) Areas to be selected for the programme should be free from the claims (including existing rights, privileges, concessions) of any person who is not a beneficiary under the scheme. Alternatively, for a given site the selection of beneficiaries should be done in such a way that any one who has a claim to any forest produce from the selected site is not left out without being given full opportunity of joining.
- vii) The selected site should be worked in accordance with a Working Scheme, duly approved by the State Government. Such scheme may remain in operation for a period of 10 years and revised/renewed after that. The Working Scheme should be prepared in consultation with the beneficiaries. Apart from protection of the site, the said Scheme may prescribe requisite operations, eg. inducement to natural regeneration of existing root stock, seeding gap filling, and wherever necessary, intensive planting, soil-moisture conservation measures etc. The Working Scheme should also prescribe other operations eg. fire-protection, maintenance of boundaries, weeding, tending, cleaning, thinning etc.
- viii) For raising nurseries, preparing land for planting and protecting the trees after planting, the beneficiaries should be paid by the Forest Department from the funds under the Social Forestry Programme. However, the village community may obtain funds from other Government agencies and sources for undertaking these activities.
- ix) It should be ensured that there is no grazing at all in the forest land protected by the village community. Permission to cut and carry grass free of cost should be given so that stall feeding is promoted.
- x) No agriculture should be permitted on the forest land.
- xi) Along with trees for fuel, fodder and timber, the village community may be permitted to plant such fruit trees as would fit in with the overall scheme of afforestation, such as anola, imli, mango, mahua, etc. as well as shrubs, legumes and grasses which would meet local needs, help soil and water conservation, and enrich the degraded soils/land. Even indigenous medicinal plants may be grown according to the requirements and preference of beneficiaries.
- xii) Cutting of trees should not be permitted before they are ripe for harvesting. The forest dept. also should not be cut the trees on the forest land being protected by the village communities except in the manner prescribed in the Working Scheme. In case of emergency needs, the village communities should be taken into confidence.
- xiii) The benefit of people's participation should go to the village communities and not to commercial or other interests which may try to derive benefit in their names. The selection of beneficiaries should, therefore, be done from only those families which are willing to participate through their personal efforts.
- xiv) The Forest Department should closely supervise the works. If the beneficiaries and/or the Voluntary Agency/NGO fail or neglect to protect the area from grazing, encroachment or do not perform the operations prescribed in the Working Scheme in a satisfactory manner, the usufructory benefits should be withdrawn without paying compensation to anyone for any work that might have been done prior to it. Suitable provisions in the Memorandum of Undertaking (MOU) for this purpose should be incorporated.

Your Faithfully,

Sd/-

(Mahesh Prasad)

Secretary to Government of India.

Copy for information and necessary action to :

1. Principal Chief Conservator of Forests/Chief Conservator of Forest (All States/UTs).

GOVT. OF INDIA GUIDELINES FOR PARTICIPATORY FOREST MANAGEMENT
NO.6-21/89-P.P.

GOVERNMENT OF INDIA

Ministry of Environment and Forests

Department of Environment, Forests and Wildlife

Paryavaran Bhavan, C.G.O. Complex, B-Block

Lodi Road, New Delhi.

Dated : 1st June, 1990

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The Forest Secretaries

(All States / UTs)

Subject : Involving of village communities and voluntary agencies for regeneration of degraded forest lands.

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Your Faithfully,

**Sd/-
(Mahesh Prasad)**

Secretary of Government of India.

Copy for information and necessary action to :

1. Principal Chief Conservator of Forest/Chief Conservator of Forest (All States/UTs).

GUIDELINES FOR STRENGTHENING OF JOINT FOREST MANAGEMENT (JFM) PROGRAMME

(Circular No. 22-8/2000-JFM (FPD), Forest Protection Division,
Ministry of Environment & Forests, Govt. of India, New Delhi,
dated 21st February, 2000)

As per the provisions of National Forest Policy 1998, the Government of India, vide letter No. 6.21/89-PP dated 1st June 1990, outlined and conveyed to State Governments a framework for creating massive people's movement through involvement of village committees for the protection, regeneration and development of degraded forest lands. This gave impetus to the participation of stakeholders in the management of degraded forests situated in the vicinity of villages. The joint forest management programme in the country is structured on the broad framework provided by the guidelines issued by the Ministry. So far, during the last ten years, 22 State Governments have adopted resolutions for implementing the JFM programme in their respective states. As on 1.1.2000, 10.24 million ha of forests lands are being managed under JFM programme through 36,075 committees.

The JFM programme in the country was reviewed by Government of India from time to time in consultation with State Governments, NGOs and other stakeholders in view of several emerging issues. In order to further strengthen the programme, the State Governments may take action on the following suggested lines.

(A) Legal backup to the JFM committees

- (i) At present, the JFM committees are being registered under different names in various States as per the provisions contained in the resolutions. Except in a few States where the committees are registered under the relevant acts, in most of the states there is no legal back up for these committees. It is, therefore, necessary that all the States Governments register under the JFM or Village committees under the Societies Registration Act, 1860 to provide them with legal back up. This may be completed by 31st March, 2000. Completion of such formation of existing JFM committees may please be reported to this Ministry.
- (ii) There are different nomenclatures for the JFM committees in different States. It would be better if these committees are known uniformly as JFM committees (JFMC) in all the States. Memorandum of Understanding, with clearly defined roles and responsibilities for different work or areas should be separately assigned and signed between the State Governments and the committees. All adults of the village should be eligible to become members of the JFM Committees.

(B) Participation of women in the JFM programme

Considering the immense potential and genuine need for women's participation in JFM programme, following guidelines are suggested for ensuring meaningful participation of women in JFM.

- (i) At least 50% members of the JFM general body should be women. For the general body meeting, the presence of at least 50% women members should be a prerequisite for holding the general body meeting.
- (ii) At least 33% of the membership in the JFM Executive Committee/ Management Committee should be filled from amongst the women members. The quorum for holding a meeting of such Executive/ Management Committee should be one-third of women executive members or a minimum of one whichever is more. One of the posts of office bearer i.e. president/ Vice-President/Secretary be filled by a woman member of the Committee.

(C) Extension of JFM in good forest areas

For better resources planning and collective management distance from the village and dependency on forests should be the main criteria for allowing JFM programme to operate. Therefore, JFM programme should cover both the degraded as well as good forests (except the protected area network). The microplan or treatment plan and memorandum of understanding should be different for degraded forests and good forest (crown density above 40%). In good forest areas, the JFM activities would concentrate on NTFP management and no alteration should be permitted in the basic silvicultural prescription prescribed in the Working Plan but to promote regeneration, development and sustainable harvesting of NTFP which can be given free or on concessional rates as per existing practice in degraded areas under JFM. The benefit sharing mechanism will also be different for the good forest areas. The JFM committees will be eligible for benefit sharing for timber, only if they have satisfactorily protected the good forests for a minimum period of at least 10 years and the sharing percentage should be kept limited to a maximum of 20% of the revenue from the final harvest. The felling of trees and harvesting of timber will be as per the provisions of the working plan. A certain percentage of revenue from final harvest should be ploughed back in the silviculture & management of the forests. The extent of good forest areas to be restricted to a maximum limit of 100 ha and generally limited to 2 km from the village boundary. For degraded forests also as far as possible JFM in good forest areas shall be done in a phased manner on pilot basis. The pilot areas may be monitored closely of a few years and based on the feedback and success achieved the programme can be extended further in consultation with the Central Government. Before allowing the good forests on pilot basis, all the degraded forests of that locality should be covered simultaneously.

(D) Preparation of microplan in JFM areas

- (i) In case of new working plans a JFM overlapping working circle should be provided to incorporate broad provisions for micro plans. To achieve this flexible guidelines should be evolved for preparation of local need based micro plans. For this purpose, the working plan officer will work in tandem with the territorial DFO and CF for finalisation of the prescriptions of the JFM overlapping working circle. The micro plans should be prepared by the Forest officers and Village Forest Protection Committees after detailed PRA exercise and should reflect the consumption and livelihood needs of the local communities as well provisions for meeting the same sustainably. It should utilise locally available knowledge as well as aim to strengthen the local institutions. It should also take into account marketing linkages for better return of NTFPs to the gatherers and should also reflect the needs of local industries/ markets. This should be done with due regards to the environmental functions and productive potential of the forests and their carrying capacity as also their conservation and biodiversity.
- (ii) In areas where the existing working plans are in force (till their revision in future), for incorporation of micro plans in the working plans, a special order may be issued by the PCCFs for implementation of the micro plan. In these areas, micro plan should aim at ensuring a multi product and more NTFP oriented approach. Without changing the basic principles of silviculture, deviations may be approved in the existing working plans if necessary. To ensure this, the concerned DFO and CF should dovetail the requirements of micro plans with the working plans.
- (iii) The micro plan should also take into consideration and provide suitable advice for areas planted/ to be planted on community lands outside the notified forest areas including in the district council areas of North East.

- (iv) Infrastructure/ Ecodevelopment under micro plan should form a separate entity for funding it through concerned development agencies.

(E) Conflict resolution

In order to resolve conflicts in the functioning of JFM committees and to maintain harmony among different groups participating in the JFM, State Governments may constitute divisional and state level representatives forums or working groups. This forum/group should include representatives from all the stakeholders including NGOs. The model prescribed by the Andhra Pradesh Government for this purpose is a case in point for consideration.

(F) Recognition of Self-initiated groups

The community groups in many places in Orissa, Bihar, Gujarat, Andhra Pradesh and Karnataka are performing the essential functions of forest protection and regeneration. These groups need to be identified, recognised and registered as JFM committees after proper verification of records and enquiry. The period of their existence and duties performed for protection and regeneration should be suitably assessed and proper weightage given to them for deriving benefits under the JFM programme.

(G) Contribution for Regeneration of Resources

For long term sustainability of resources, it is essential that a mechanism is created for ploughing back certain percentage of the revenue earned from final harvest. For this purpose, no less than 25% of the share of village community should be deposited in the village development fund for meeting conservation and development needs of the forests. A matching contribution may be made by the forest department for its share of such sales. There should be transparent mechanisms for computation of income for sharing the benefits between different stakeholders.

(H) Monitoring and Evaluation

Concurrent monitoring of progress and performance of this programme should be undertaken at Division and State level. Evaluation of the programme should be planned at an interval of 3 years and 5 years at Division and State level respectively.

JFM NETWORK

The Ministry of Environment and Forests hereby constitute a "JFM Network" with the following members.

1. *Constitution of the Network*

1. Inspector General of Forest & Special Secretary	Chairman
2. Addl. IGF (MK)	Vice Chairman
3. A representative of NAEF	Member
4. Five PCCFs (one from each zone) by rotation for one year	Member
5. A representative of World Bank in India	Member
6. A representative of Ford Foundation, New Delhi	Member
7. A representative of DFID New Delhi	Member
8. A representative of SPWD	Member
9. A representative of WWF	Member
10. A representative of OECF, Japan	Member
11. A representative of Tata Energy Research Institute	Member
12. Two young field officers (one women) implementing JFM in the field by rotation	Member
13. Two Representative of grass root level NGOs (one women) by Rotation	Member
14. A representative of National NGO working in Forestry & Rural Development	Member
15. One International NGO active in the field of JFM	Member
16. DG, ICFRE, Dehra Dun	Member
17. Director, IIFM, Bhopal	Member
18. Director, IGNFA, Dehra Dun	Member
19. Director, FSI, Dehra Dun	Member
20. DIG, Forest Policy	Member
21. DIG, Forest Protection	Member Secretary
22. AIG, JFM Cell	Jt. Member Secretary

2. The Network will have following terms of reference.

- (i) To act as a regular mechanism of consultation between various agencies engaged in JFM work in the country.
 - (ii) To obtain constant feedback from various stakeholders on the JFM programme for proper policy formulation and suitable direction to states.
3. The Network will meet as and when felt necessary but atleast twice a year.
 4. The Chairman can co-opt any organisation in the Network. Serial No. 12,13, 14 and 15 to be nominated for two years on rotation by IGF & SS.
 5. The issues with the approval of the Minister for Environment and Forests, Government of India.